TO DEFINE THE CRIME OF MURDER, PROVIDE PENALTY THEREFOR, AND TO ABOLISH THE PUNISHMENT OF DEATH.

SPEECH

OF

GEN. NEWTON MARTIN CURTIS,

OF NEW YORK,

IN THE

HOUSE OF REPRESENTATIVES,

Thursday, June 9, 1892.

WASHINGTON.
1892.

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ORDER OF BUSINESS.

The SPEAKER. The Clerk will report the order made yesterday.

The Clerk read as follows:

Resolved, That Thursday, the 9th day of June, instant, after the reading of the Journal, be set apart for the consideration of bills reported from the Committee on the Judiciary, in such order as they may be called up by the chairman of the committee, not to interfere with appropriation bills.

The SPEAKER. The gentleman from Texas, chairman of the Judiciary Committee [Mr. CULBERSON], is recognized.

MURDER AND MANSLAUGHTER.

Mr. CULBERSON. I call up the bill (H. R. 6791) to define the crimes of murder in the first and second degree and manslaughter, and providing punishment therefor.

The bill was read, as follows:

Be it enacted, etc., That whoever purposely and with premeditated malice, or in the perpetration of, or in the attempt to perpetrate, any rape, arson, robbery, or burglary, or by administering poison, or causing the same to be done, within any fort, arsenal, dockyard, magazine, or in any other place or district of country under the exclusive jurisdiction of the United States, or upon the high seas, or any arm of the sea, or in any river, haven, creek, basin, or bay within the admiralty jurisdiction of the United States and out of the jurisdiction of any particular State, kills any human being, is guilty of murder in the first degree, and upon conviction thereof shall suffer death, or imprisonment at hard labor during life, in the discretion of the jury, such discretion to be expressed in their verdict.

SEC. 2. That whoever within any of the places named, or upon or in any of the waters mentioned in the preceding section, purposely and maliciously, but without premeditation, kills any human being, is guilty of murder in the second degree, and upon conviction thereof shall be imprisoned at hard labor during life, or for any period not less than ten years.

SEC. 3. That whoever within any of the places or upon or in any of the waters mentioned in the first section unlawfully kills any human being without malice, express or implied, either voluntarily upon sudden heat, or involuntarily, but in the commission of an unlawful act, is guilty of manslaughter, and upon conviction thereof shall be imprisoned at hard labor not less than one nor more than twenty years.

SEC. 4. That section 5339 and section 5341 be, and the same are hereby, repealed.

Mr. CULBERSON. I yield such time to the gentleman from Ohio [Mr. EZRA B. TAYLOR] as he may desire; and I respectfully ask the House to preserve order, as this is an important measure.

Mr. EZRA B. TAYLOR. Mr. Speaker, I presume some members of this House will be surprised when I say to them that hitherto there has been no definition of the crime of murder under United States statutes, and no distinction between murder in the first and murder in the second degree. So that if a man is put upon trial for what is murder at common law, he must either be acquitted altogether or must suffer the extreme penalty of death. The result of this condition of the law has been that in many cases convictions have been extremely hard to obtain, the punishment of death appearing to be unjust under the peculiar circumstances. The Attorney-General has frequently called attention to this subject, especially in his report for 1891. A bill defining murder in the first and second degrees was introduced into this House early in the session, and referred to the Judiciary Committee. After a full and most careful consideration of the whole matter the bill just read was reported favorably as a substitute for the original bill.

In the consideration of this matter and the preparation of this bill by the committee the statutes of all the States have been carefully examined. No word of importance is used in the bill that has not received a well-known and well-fixed construction from the highest courts. The bill declares that if murder by premeditated malice is committed in certain ways defined it shall be murder in the first degree; but where murder is committed without premeditation, though maliciously and purposely, it is defined as murder in the second degree. It is also provided, and in this respect there is a difference from the law of some of the States on this subject, that in the discretion of the jury murder even in the first degree may be punished by imprisonment at hard labor for life, instead of exacting in all cases the severest penalty—the death punishment.

Mr. LANHAM. What is the punishment for murder in the second degree as defined in this bill?

Mr. EZRA B. TAYLOR. I will read the provision:

> That whoever within any of the places named, or upon or in any of the waters mentioned in the preceding section, purposely and maliciously, but without premeditation, kills any human being, is guilty of murder in the second degree, and upon conviction thereof shall be imprisoned at hard labor during life, or for any period not less than ten years.

Then in regard to manslaughter there is this provision:

> That whoever within any of the places or upon or in any of the waters mentioned in the first section unlawfully kills any human being without malice, express or implied, either voluntarily upon sudden heat, or involuntarily, but in the commission of an unlawful act, is guilty of manslaughter, and upon conviction thereof shall be imprisoned at hard labor not less than one nor more than twenty years.

The greatest departure in the bill from the law as it exists in some of the States is in the provision that at the discretion of the jury murder even in the first degree may be punished by imprisonment for life. A provision of this kind, although not universal throughout the Union, has existed in many of the States for a long time; and the report comes to me from such communities that it has worked satisfactorily to the people, and that they would not change it on any consideration.

Mr. Speaker, I do not desire to occupy further time. This is an important bill, and I trust it will be favorably regarded by the House. My friend from New York [Mr. CURTIS] desires to

offer an amendment. I yield to him for that purpose, and for such brief remarks as he may see fit to make in support of his amendment.

Mr. CULBERSON. How much time does the gentleman from New York want?

Mr. CURTIS. I ask that I may be allowed to proceed without limit.

Mr. CULBERSON. I can not agree to give the gentleman unlimited time.

Mr. CURTIS. If I be allowed to go on without limit, I will speak briefly, and not being under pressure will not be obliged to speak rapidly, and thereby exhaust my voice.

Mr. CULBERSON. How much time does the gentleman want?

Mr. CURTIS. I want to go over as briefly as possible the salient points of the argument. I would rather not have my time limited. I will be governed by the sense of the House. If I find any unwillingness to listen to what I wish to adduce in support of the principle which I ask the House to sanction, I will desist.

Mr. CULBERSON. The gentleman from New York will understand that I am besieged on all sides with reference to bills here, and I do trust that he will not upon a question of this sort—a mere question of ethics—take up the time of the House unreasonably.

Mr. CURTIS. I will not.

Mr. EZRA B. TAYLOR. I desire to say to my colleague on the committee [Mr. CULBERSON] that I had an understanding with the gentleman from New York that he should be brief, although he does not desire to be limited.

The SPEAKER. The amendment in the nature of a substitute proposed by the gentleman from New York will be read.

The Clerk read as follows:

A bill (H. R. 7197) to define the crimes of murder in the first and second degree, and manslaughter, and providing punishment thereof, and to abolish the punishment of death.

Be it enacted, etc., That whoever purposely and with premeditated malice, or in the perpetration of, or in the attempt to perpetrate, any rape, arson, robbery, or burglary, or by administering poison, or causing the same to be done, within any fort, arsenal, dockyard, magazine, or in any other place or district of country under the exclusive jurisdiction of the United States, or upon the high seas, or any arm of the sea, or in any river, haven, creek, basin, or bay within the admiralty jurisdiction of the United States, and out of the jurisdiction of any particular State, kills any human being, is guilty of murder in the first degree, and upon conviction thereof shall suffer imprisonment at hard labor during life.

SEC. 2. That whoever within any of the places named, or upon or in any of the waters mentioned in the preceding section, purposely and maliciously, but without premeditation, kills any human being, is guilty of murder in the second degree, and upon conviction thereof shall be imprisoned at hard labor for a period of not more than twenty years.

SEC. 3. That whoever within any of the places, or upon or in any of the waters mentioned in the first section, unlawfully kills any human being without malice, express or implied, either voluntarily upon sudden heat, or involuntarily, but in the commission of an unlawful act, is guilty of manslaughter, and upon conviction thereof shall be imprisoned at hard labor for a period of not more than ten years.

SEC. 4. That any person convicted of an offense to which the punishment of death is now specifically affixed by the laws of the United States shall be sentenced to imprisonment at hard labor for the term of his or her natural life, and any person convicted of an offense to which the punishment of death or such other punishment as the court in its discretion may direct, is affixed, the maximum punishment shall be imprisonment at hard labor for the term of his or her natural life.

SEC. 5. That the punishment of death prescribed for the violation of any provision of the United States statutes is hereby abolished, and all laws and parts of laws inconsistent with this act are hereby repealed.

Mr. CURTIS. Mr. Speaker, I desire first to acknowledge the courtesy of the Judiciary Committee, and particularly that of my friend from Ohio [Mr. EZRA B. TAYLOR], for consenting to have my bill offered as a substitute for the one reported by the committee.

I agree with my friend, the chairman of the Judiciary Committee [Mr. CULBERSON], that House bill 6791 is an important measure. I also agree, in the main, with the views expressed by my friend from Ohio, who has so clearly explained the provisions of this bill, and the pressing need of enacting a measure to define the crime of murder in the first and second degree, and manslaughter.

I call the special attention of the House to his language, that—

Hitherto there has been no definition of the crime of murder under United States statutes, and no distinction between murder in the first and murder in the second degree. So that if a man is put upon trial for what is murder at common law, he must either be acquitted altogether or must suffer the extreme penalty of death. The result of this condition of the law has been that in many cases convictions have been extremely hard to obtain, the punishment of death appearing to be unjust under the peculiar circumstances.

The simple statement of the fact that the criminal code of the United States has stood for more than an hundred years without revision or amendment should be enough to convince this House of the necessity for proceeding promptly to discharge a duty which all preceding Congresses have neglected, that of remodeling the criminal code to make it conform to the spirit of the age in which we live.

Sir William Blackstone, in his treatise on crimes and punishments, stated that the criminal codes of England and continental countries were crude and imperfect in comparison with their civil codes; and this criticism is doubtless as true to-day as when it was made, and will apply with peculiar force to the relative condition of the civil and criminal laws of the United States. While many countries in Europe have made successful efforts to remedy some of these defects, Congress has done nothing in that direction. Many States of the Union more than a century ago adopted wholesome provisions, which Congress now for the first time is taking into serious consideration.

Fully approving those provisions of House bill 6791, defining the crime of murder in the first and second degree, and manslaughter, I do, nevertheless, most earnestly protest against that pernicious principle now for the first time sought to be introduced into the Federal statutes—that of authorizing juries, in their discretion, to affix the punishment of death or imprisonment for life as a penalty for murder in the first degree. And I oppose the retention of the death penalty as a punishment for any crime.

OBJECTIONS TO JURIES AFFIXING PUNISHMENTS.

I will first state my objections to that provision of the bill which confers upon juries the power to affix in their discretion

one of two penalties as a punishment for the crime of murder in the first degree.

I am not one who would willingly take from juries any of the rights and powers derived from the common law, nor such as have, in the progress of human affairs, been conferred by wise statutes; but I am opposed to conferring additional powers which are inconsistent with the fundamental principles constituting trials by jury whereby the juror takes upon himself the duties of legislator and judge. The conferring on juries the powers contemplated by this bill will be detrimental to the public safety, and imperil the personal rights and liberties of every citizen charged with violating the laws. The rights and duties of legislators, judges and juries are distinct, and should be kept separate and independent. If allowed to mingle or overlap each other the great objects of civil government, which are to secure to every man his natural rights and the blessings of life to be enjoyed in safety and tranquility, will be endangered.

Among the earliest prohibitions in the Constitution is that against the enactment of *ex post facto* laws, following next after the declaration that "the privilege of the writ of habeas corpus shall not be suspended unless when in cases of rebellion or invasion the public safety may require it," which, with that subsequent provision that the trial of all crimes, except in cases of impeachment, shall be by jury, specifies the Constitutional provisions which secure to every citizen protection to life, liberty, and property.

"*Ex post facto* laws" are defined to be "such as create or aggravate crime, or increase the punishment, or change the rules of evidence for the purpose of conviction." Their chief element is that of uncertainty. Therefore, any statute which creates or defines a crime, and which may in the future be subject to different interpretations, or its violators be punished by different penalties, possesses the very essence of uncertainty, and is in violation of the spirit of the article of the Constitution referred to.

The long controversy growing out of cases of libel, which led to the Fox act, in 1792, "to remove doubts respecting the functions of juries in cases of libel," settled a disputed question, since which intent, in cases of libel, like premeditation and malice in cases of homicide, is held to constitute an element to be considered in determining guilt and the degree of crime, and comes within the jurisdiction of juries: since that time there has been little, if any, alteration in their jurisdiction in England.

Burke correctly states the principle which should govern legislatures and juries, that "juries ought to take the law from the bench only, but it is our business that they should hear nothing from the bench but what is agreeable to the principles of the constitution. The jury are to hear the judge, the judge is to hear the law, where it speaks plain, and where it does not he is to hear the legislature," which should "fix the law in such a manner as to resemble, as it ought, the great author of all law, in whom there is no variableness nor shadow of turning."

Lord Bacon says:

> Certainty is so essential to a law as without it a law can not be just. It is a good rule, that is the best law which gives least liberty to the arbitrage of the judge.

And Burke condemns the principle of discretionary power in juries:

A large and liberal construction in ascertaining offenses, and a discretionary power in punishing them, is the idea of criminal equity, which is, in truth, a monster in jurisprudence. It signifies nothing whether a court for this purpose be a committee of council or a House of Commons or a House of Lords, the liberty of the subject will be equally subverted by it.

My friend from Ohio [Mr. EZRA B. TAYLOR] says that—

A provision of this kind, although not universal throughout the Union, has existed in many of the States for a long time, and the report comes to me from such communities that it is satisfactory to the people, and that they would not change it on any consideration.

An examination of the records as to the operations of this principle in the States where adopted will satisfy my friend, and the House, I doubt not, that the principle is a vicious one. That it has worked satisfactorily is maintained on the ground that verdicts, with findings for life imprisonment have been found against persons tried for atrocious crimes, where verdicts of guilt could not have been obtained under provisions requiring the infliction of the death penalty. This argument condems the severity of the law, the extreme penalty of which cannot be enforced, except under circumstances of unusual excitement. Juries have been led to render verdicts reflecting the passions of the community, and in cases where they have not awarded the severest penalty the mob have frequently resorted to violence, and inflicted it, whereas, had a milder penalty been the maximum of the law, the sentence inflicting it would have been acquiesced in. The miscarriage of justice and the failure to convict in capital cases, grow out of conditions similar to those stated by Sir William Blackstone, which condemn the severity of the law rather than the conduct of those selected to vindicate it.

The mercy of juries will often make them strain a point and bring in a larceny to be under the value of 12*d.* when it is really of much greater value; but this is a kind of pious perjury, and does not at all excuse our common law in this respect from the imputation of severity, but rather strongly confesses the charge.

The tendency of this innovation is in the direction of mob law, and if adopted will direct verdicts on the same principles which rule in Judge Lynch's court, organized on the assumption that vigilance committees possess all the functions of government, legislative, judicial, and executive.

The criminal records of the States in which this principle is established show the greatest number of lynchings. In fact, the jurisdiction of Judge Lynch is confined almost entirely to States in which juries are authorized to determine guilt and fix the penalty. The workings of this principle have not been satisfactory in the State of Minnesota at least, for in 1883 she repealed the statute authorizing it.

If the jurisdiction of juries in criminal cases tried in United States courts is to be increased, as provided by this bill, to empower them to affix punishment in their discretion, the next step, I conceive, in perfecting this system in the direction it tends, will be that of selecting jurors by ballot at popular elections.

THE DEATH PENALTY UNDESIRABLE, AND NOT SUSTAINED BY DIVINE AUTHORITY.

Mr. Speaker, the principle I wish to have introduced into the Federal Statutes by House bill 7197, the total abolition of the punishment of death, is something more than a mere question of ethics, as stated by my friend from Texas [Mr. CULBERSON]. It is a practical question, and is entitled to be considered on its merits. If the introduction of this principle will tend to promote good order in society, improve the administration of justice, and lessen crime we should give it our assent. We should hesitate if it tends to demoralize society, to lessen restraints upon the vicious, weaken administration, or relinquishes any great or actual deterrent from crime. It has its ethical side, but I will not in this discussion use the arguments of the moralists who oppose capital punishment on the ground that it is unauthorized, unjust, and unchristian.

The individual has the natural right to protect himself from assault and death, and all codes protect him in the proper exercise of the right of self-defense. So has the state the right to employ its forces in protecting the individual from violence, and society from the acts of the unbridled and vicious. The individual, at the moment of attack, may employ all means at hand to save his life until rescued: and the state, in defense of the individual, its peace and tranquillity, can go as far in maintaining its authority as civilized nations, in the exercise of just and equal laws, have ever gone. While an individual may use every means for his protection when menaced and in imminent peril, he can not, under the fiction of self-defense, carry it to the destruction of his assailant when the assailant is disarmed and in keeping of the police. Nor can a state find judicious warrant for going beyond the disarming and confining of a disorderly person. A single step beyond the line of safety is one step in the direction of that condition of society where brute force, not reason, rules.

In advocating this principle we are early warned not to legislate against the laws of God and the criminal codes of civilized states, perfected by the wisdom of ages. We are treated to an enumeration of penalties prescribed in codes established in the infancy of the human race as worthy of perpetual observance by enlightened nations, and commanded to hold as binding upon us and all future generations of men, the laws enacted for a rude and barbarous people. This warning would be sufficient to deter if justified by truth. So respectable are the chief advocates of the theory that the instructions given to Noah, or at least such as it suits their convenience to observe, are binding on mankind, and that no state can be well governed unless her laws are enacted in conformity with those instructions, that I prefer to oppose their opinions by the views of men whose learning will command respectful consideration wherever their names are spoken.

Many learned men have disputed the correctness of the translation of the sixth verse of the ninth chapter of Genesis, as it appears in the St. James version. Calmet, Osterwald, Wycliffe, and Scio have each rejected the words "by man" in the sixth verse. These words do not appear in the Septaugint. They do not appear in the Vulgate, which is considered by many to be

the best translation. It is important to know that this difference of opinion exists among learned men respecting the meaning of the verse, which has been quoted as divine authority for the taking of human life for the shedding of man's blood.

The antediluvians subsisted on an exclusively vegetable diet. To Noah God said:

> And the fear of you and the dread of you shall be upon every beast of the earth, and upon every fowl of the air, upon all that moveth upon the earth, and upon all the fishes of the sea; into your hands are they delivered.
> Every moving thing that liveth shall be meat for you; even as the green herb have I given you all things.
> But flesh with the life thereof, which is the blood thereof, shall ye not eat.

In authorizing Noah and his descendants to partake of meat, God coupled with it the declaration of the sacredness of life, that blood, its symbol, they should not eat. Some learned men have construed the sixth verse as a prohibition against cannibalism, and not a punishment for homicidal crime.

With the references already made to the different opinions entertained by learned men as to the meaning of the Noahic law, I conclude all reference to the warning of those who declare that the abolition of the death penalty is contrary to the law of God, by quoting the language of theologians whose learning and piety will, I trust, protect them from the assaults which the partially learned are ever ready to make on those not of their sect, training, or convictions.

Richard Hooker's Ecclesiastical Polity, book 3, chapter 10:

> Finally, that albeit the end continue, as in that law of theft specified, and in a great part of those ancient judicials it doth; yet forasmuch as there is not in all respects the same subject or matter remaining for which they were first instituted, even this is sufficient cause of change: and therefore laws, though both ordained of God himself, and the end for which they were ordained continuing, may notwithstanding cease, if by alterations of persons or times they be found insufficient to attain unto that end. In which respect why may we not presume that God doeth even call for such change or alteration as the very condition of things themselves doth make necessary?

John Calvin, Institutes of the Christian Religion, book 4, chapter 20, sections 14, 15, 16:

> From the magistracy we next proceed to the laws, which are the strong nerves of civil polity, or, according to an appellation which Cicero has borrowed from Plato, the souls of states, without which magistracy can not subsist, as on the other hand without magistrates laws are of no force. No observation therefore can be more correct than this, that the law is a silent magistrate, and the magistrate a speaking law. Though I have promised to show by what laws a Christian State ought to be regulated, it will not be reasonable for any person to expect a long discussion respecting the best kind of laws; which is a subject of immense extent, and foreign from our present object.
>
> I will briefly remark however, by the way, what laws it may piously use before God and be rightly governed by among men. And even this I would have preferred passing over in silence if I did not know that it is a point on which many persons run into dangerous errors. For some deny that a State is well constituted which neglects the polity of Moses and is governed by the common laws of nations. The dangerous and seditious nature of this opinion I leave to the examination of others; it will be sufficient for me to have evinced it to be false and foolish. Now, it is necessary to observe that common distinction which distributes all the laws of God promulgated by Moses into moral, ceremonial, and judicial: and these different kinds of laws are to be distinctly examined, that we may ascertain what belongs to us and what does not. Nor let any one be embarrassed by this scruple, that even the ceremonial and judicial precepts are included in the moral.
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> The moral law, therefore, with which I shall begin, being comprised in two leading articles, of which one simply commands us to worship God with pure faith and piety, and the other enjoins us to embrace men with sincere

love; this law, I say, is the true and eternal rule of righteousness, prescribed to men of all ages and nations who wish to conform their lives to the will of God. For this is his eternal and immutable will, that he himself be worshiped by us all, and that we mutually love one another. The ceremonial law was the pupilage of the Jews with which it pleased the Lord to exercise that people during a state resembling childhood till that "fullness of the time" should come when he would fully manifest his wisdom to the world, and would exhibit the reality of those things which were then adumbrated in figures. The judicial law, given to them as a political constitution, taught them certain rules of equity and justice by which they might conduct themselves in a harmless and peaceable manner towards each other.

As the ceremonies therefore might be violated without any abrogation or injury of piety, so the precepts and duties of love remained of perpetual obligation, notwithstanding the abolition of all these judicial ordinances. If this be true, certainly all nations are left at liberty to enact such laws as they shall find to be respectively expedient for them; provided they be framed according to that perpetual rule of love, so that, though they vary in form, they may have the same end. For those barbarous and savage laws, which rewarded theft and permitted promiscuous concubinage, with others still more vile, execrable, and absurd, I am very far from thinking ought to be considered as laws: since they are not only violations of all righteousness, but outrages against humanity itself. Now, as it is certain that the law of God, which we call the moral law, is no other than a declaration of natural law, and of that conscience which has been engraven by God on the minds of men, the whole rule of this equity of which we now speak is prescribed in it. This equity therefore must alone be the scope and rule and end of all laws. Whatever laws shall be framed according to that rule, directed to that object, and limited to that end, there is no reason why we should censure them, however they may differ from the Jewish law, or from each other.

They who defend this law and regard it of perpetual obligation, they who love to linger in the humid atmosphere of Mount Ararat, and fondly cling with blind devotion to the ceremonies instituted for sojourners in the wilderness, slowly emerging from centuries of slavery, must certainly have refused to trace with the Magi the course of that star which illumined the world, have avoided the manger, the carpenter's shop, the fisherman's cottage; have stuffed their ears with cobwebs of brutal prejudice, that the lessons taught by the Sermon on the Mount might not enter their hearts; have veiled their eyes with vengeance, that they might not see how He, in the extreme agony of His suffering for man, forgave His persecutors, again declared the law of reform, and took to His home the repentant thief. They may search in vain through the chronicles of the theocracy for the record of a single execution for murder under His administration of nearly thirty centuries. It is recorded that Levi, Absalom, and David, and other men of renown offended against this law, yet they died " in battle or in bed."

That this punishment has come down to us from the earliest period of time, that it has been sanctioned by the criminal codes of all races and nations of men, is no just reason for its continuance in the polity of a free and enlightened state. If age and universality are sound arguments to be offered for the continuance of this ancient principle, so they are equally sound and conclusive against every effort for progress, against every discovery in science, the perfection of the arts, the use of inventions, and the employment of the fruits of genius. Age and universality have ever been the ready arguments of those who have stood in the way of progress. Every invention, every discovery has been compelled to fight its way to recognition against ancient theories, through convictions maintained and protected by punishments, proscriptions, and abuse.

Those who claim it to be our duty to continue the laws of past ages are of the same class of men Sir Thomas More spoke of as those "who thought it a mortal sin to be wiser than their grandfathers." They have lived in every age, valiant defenders of established customs and laws. They suppressed Galileo Galilei, and sent him to a dungeon "guilty of having seen the earth revolve around the sun," by an invention which disclosed to mortal eyes the handiworks of Him in whose name they resisted truth and science. Their names have been forgotten, concealed in the molding records of unused libraries, his is whispered to the student and mariner by the stars and planets as often as he observes their course.

Morse pleaded with the stubborn defenders of physical laws, whose limits wise legislators pretended to definitely understand as not to include the possibility of transmitting intelligence to distant places by lightning, and asked those who sat in this Chamber only a generation ago for a petty pittance to construct to a neighboring city and put into practical operation an invention which, notwithstanding the difficulty attending its introduction, in the short space of the active period of a single life, has, like "the wings of the morning," carried blessings to the uttermost parts of the earth.

The students of science have discovered, but by slow degrees, the natural laws governing the physical universe. These additions to the sum of human knowledge have enlarged the sphere and increased the sum of human happiness. Let legislatures seek to discover those laws which will best regulate the relations of man to man in society, the principles underlying the best system to regulate human concerns. To "know thyself," to "know thy fellow-man," to know the impulses which move the springs of action, will enable them to properly adjust the rewards and punishments now too little acted upon, if at all understood. It will establish a system which will secure the primary object of government, "the greatest good to the greatest number." The inert legislator, the blind adherent to past regulations, ought to be warned by the fate of that nation which closed its history in the single enactment that there should be no change in its laws.

INEFFICIENCY OF THE DEATH PENALTY.

No one will maintain that our criminal laws are enacted on the principle of giving the greatest protection to the well-disposed from the acts of the unbridled and vicious. The orderly are not secured that safety and protection to life and property which wise laws should afford. The vicious are held to no certain account for their most atrocious acts. Our laws are not enforced because the sentiments of our people rise in rebellion against the infliction of irredeemable penalties. Let the criminal laws be revised so that certainty of punishment will take the place of severe penalties, now seldom awarded and next to impossible to have inflicted, first, because of the reluctance of juries to convict, and, second, by the exercise of executive clemency—granted not on account of the innocence of the prisoner, but because a concentration of social and political influence is found to be a stronger power to override and strike down the hand of justice than the simple plea of innocence.

We are daily informed by the public journals that the most atrocious offenses are committed with impunity, and that homicidal crimes have increased out of all proportion to the population. While the population of the United States within the last decade has increased about 20 per cent, the number of homicidal crimes has increased more than 400 per cent. During these years the nation has been singularly free from great calamities, war, pestilence, and famine, conditions that disrupt society and paralyze administration. Yet, in a period of unparalleled financial prosperity, homicidal crimes have increased from 1 in 35,000 in 1882 to 1 in 10,000 in 1891, as shown by statistics collected by the Chicago Tribune, which are approximately correct and entitled to the fullest credit. They are accepted as the most complete to be obtained in this country. That the method by which they are collected and revised may be understood, I give entire the letter of the statistician of that office, detailing the manner in which the work is done. These statistics show not only a rapid increase in homicidal crimes, but the more rapid decline in awarding and inflicting the prescribed punishments therefor.

THE CHICAGO TRIBUNE, EDITORIAL ROOMS,
Chicago, March 6, 1892.

DEAR SIR: Your favor requesting statistics of homicidal crimes in the United States is at hand. May I prelude them with the statement that, of course, the lists are not complete. I may state, however, that I am confident, so far as homicides are concerned, that they represent fully 90 per cent of the accurate number, and that the hangings and lynchings are substantially complete. I may also add that these statistics are made up from the daily telegraphic reports to the morning papers of this city and then supplemented from a daily scrutiny of the representative papers in every prominent city in the United States which quite completely cover the respective States. I submit the following statement for the past ten years as annually published in the Tribune:

Year.	Murders.	Hangings.	Lynchings.
1882	1,467	121	117
1883	1,697	107	135
1884	1,465	123	195
1885	1,808	108	181
1886	1,499	83	133
1887	2,335	79	123
1888	2,184	97	144
1889	3,567	98	175
1890	4,290	102	126
1891	5,903	123	195
1892, to date	875	25	36

My general impression is that the fewest murders in proportion to population are committed in Maine, Rhode Island, Vermont, Michigan, Minnesota, and Wisconsin.

Of the total number of hangings in ten years 518 have been in Northern States and 728 in Southern; of lynchings 425 in the North and 1,150 in the South.

Trusting this may supply the information you desire, I remain,

Yours, very truly,

GEO. P. UPTON,
Associate Editor Tribune.

Hon. N. M. CURTIS.

In 1882, 8 per cent of those who committed homicidal crimes suffered the extreme penalty of the law. In 1891 only 2 per cent suffered that penalty.

Mr. COBB of Alabama. Do you mean to assert that all those who did not suffer the extreme penalty went unpunished?

Mr. CURTIS. I do not mean to say that all the remainder went entirely unpunished, but there was a general failure to enforce the sanctions of the law.

Mr. COBB of Alabama. But they got the punishment that you provide in your bill.

Mr. CURTIS. Not many of them; a very few.

Mr. Speaker, I shall be glad to answer the questions of my friend, but as I am pressed for time and compelled to state hurriedly the different points in my argument, I ask that gentlemen will withhold questions until I am through, when I will endeavor to answer such as they may desire to propound.

If capital punishment did in fact deter from crime, it might be continued as a measure of expediency; but when it affords no protection to society, and all its tendencies are to debase and demoralize, what reason have we for continuing it in our criminal statutes? I do not claim, nor do the advocates of capital punishment claim, that penalties are in themselves sufficient to prevent crime, or that any punishment, however severe or certain in its infliction, will altogether banish crime. We all believe, I doubt not, that prompt trial and the certain infliction of specific penalties will do all that laws can accomplish for the suppression of crime. The character of a nation's laws reflect the moral and social condition of its people. Nor have the people of any nation risen higher than the spirit of the laws by which they have been long governed. Laws should be a crystallization of the best sentiment of the people, and calculated to lead the nation to a higher plane of administration.

Such systems have promoted civilization, and it is the only sure method by which to secure progress in the future. Prescribe mild penalties and provide for their certain enforcement, which can never be done unless the laws command the respect and approval of the people in whose hands their administration lies. That laws should commend themselves to and be suitable to the condition of a nation was understood and expressed by Solon. When asked if he had prepared the best code he could have written for the Athenians, he answered: "Not the best code I could have prepared, but the best code the Athenians are now able to bear."

The code of many States, particularly our criminal code, are not laws under the definition "A municipal law is a rule of action prescribed by the supreme power in a State, commanding what is right and prohibiting what is wrong." Nor under the definition of that other learned Englishman, who in pertinent interrogatory and answer gives us the constituent elements of a State, and says:

> And sovereign law, that State's collected will,
> Sits empress, crowning good, repressing ill.

A criminal law whose sanctions are not enforced against 98 per cent of those who violate its provisions, evidently lacks the essential elements of a law, because it does not properly express the "State's collected will."

ABOLITION OF THE DEATH PENALTY JUSTIFIED BY EXPERIENCE.

Nations which have had much that is common to ours, and governed by a system of laws producing beneficial results, may well be imitated, for experience is a safe teacher. History gives us the results of every system of government which has been tried, and to those which were governed by cruel and sanguinary laws we are little indebted for lessons in the sciences, the arts, in jurisprudence, in patriotism. To Athens we owe most for theory and example, pertaining to the age of Pericles. At the close of his eventful career he declared that the circumstance in his whole life the most worthy of mention and remembrance was this: "That he never caused a single citizen to put on mourning."

To Rome we owe most for that period when, under the operation of the Porcian law, she did not for more than two centuries inflict the punishment of death on a single citizen. It was then she attained her greatest power and perfected that system of laws, the principles of which have been so incorporated into those of succeeding nations that to-day she sways by the silent influence of her laws many times more people than her triumphant eagles ever looked down upon as provinces or allies. Cicero, statesman and lawyer, spoke the sentiment prevailing in Rome's best period:

> Far be from us the punishment of death, its ministers, its instruments. Remove them not only from actual operation on our bodies, but banish them from our eyes, our ears, and thoughts. For not only the execution, but the apprehension, the existence, the very mention of these things is disgraceful to a freeman, to a Roman citizen.

The Empress Elizabeth, of Russia, in 1758, forbade the infliction of the punishment of death during her reign, and in 1768 Empress Catherine II caused this prohibition for all offenses but that of treason to be incorporated in her code of criminal laws. Blackstone, in commenting on a code of laws which declared one hundred and sixty offenses worthy of instant death, referred to the laws of Russia in the following language:

> Was the vast territory of the Russians worse regulated under the late Empress Elizabeth than under her more sanguinary predecessor? Is it now, under Catherine II, less civilized, less social, less secure? And yet we are assured that neither of these illustrious princesses has, throughout their whole administration, inflicted the death penalty; and the latter has, upon the full persuasion of its being useless, nay, even pernicious, given orders for abolishing it entirely throughout her extensive dominions.

Grand Duke Leopold, in 1786, abolished the death penalty in Tuscany. He referred to its operations in the following terms:

> With the utmost satisfaction to our paternal feelings, we have at length perceived that the mitigation of punishment, joined to a most scrupulous attention to prevent crime, and also a great dispatch in the trial, together with a certainty of punishment to real delinquents, has, instead of increasing the number of crimes, considerably diminished that of smaller ones, and rendered those of an atrocious nature very rare.

We have it on the authority of Dr. Franklin that at this time in the adjoining state of Rome, protected by the deterrent influence of the death penalty, always inflicted with great pomp and parade, there were, in the city of Rome and vicinity, in the short space of three months, sixty murders. In 1790, capital punishment was restored in Tuscany for riotous disturbances, and in 1795 for four other crimes; but the punishments were sel-

dom inflicted. And now, for more than sixty years, there have been no judicial executions in Tuscany.

The punishment of death has been abolished in Belgium, in Roumania, in Portugal, in Holland, in Switzerland, except in two cantons, and in these so seldom inflicted that there has been but one execution in twenty years.

In all the continental states of Europe, except Spain and France, great modifications have taken place in their criminal codes and penalties made milder. Those for which severe penalties had been previously inflicted have been considerably reduced in number, so that the infliction of the death penalty is now extremely rare. No evil effects have attended the remission of severe penalties. On the contrary, the crimes for which death had been the punishment, have diminished on the substitution of milder penalties.

Earnest efforts have been made to introduce this principle into the laws of England, but for a long time these efforts were attended with little success. Sir Thomas More, condemned capital punishment in his writings. He, however, ordered its infliction from the bench, approved it when lord chancellor of Henry VIII, and died on the block a victim to a law he privately condemned but officially approved.

Sir Edward Coke pathetically denounced capital punishment in his epilogue to the Third Institute:

> True it is that we have found by woeful experience that it is not frequent and often punishment that doth prevent like offenses; indeed justice is better which certainly prevents than that which harshly punishes, agreeing with the rule of the physician for the safety of the body, precaution is better than healing, and it is a certain rule that you will see those things frequently committed which are constantly punished; for the frequency of the punishment makes it so familiar as it is not feared. For example, what a lamentable thing it is to see so many Christian men and women strangled on that cursed tree of the gallows, insomuch as if in a large field a man might see together all the Christians that but in one year, throughout England, come to that untimely and ignominious death, if there were any spark of grace or charity in him, it would make his heart bleed to pity and compassion.

Lord Bacon condemned capital punishment, when he said:

> Let there be no rubrics of blood.

Notwithstanding these amiable sentiments, Lord Bacon and Lord Coke, then attorney-general, sat in the Parliament which passed the act making it a crime punishable with death "To evoke an evil spirit or to consult with, covenant with, entertain, employ, feed, or reward any evil spirit, or to take up dead bodies from their graves to be used in any witchcraft, sorcery, or charm." This bill passed in a Parliament in which sat the most learned and distinguished men of England; it was specially commended by a select committee of the House of Lords, which included among its members twelve bishops of the established church. Indeed, little improvement could have been expected in times when the soft hearts of these great legal luminaries became as steel, their sensibilities stifled in the rigorous, compassionless atmosphere of official station, graced, as it was, by these prelates, "Ministers of the gospel of Christ, who were ready to bathe their hands in blood in the name of the God of all mercy," that they might be able to thwart the machinations of the devil, operating through old women, cats, mice, and bees, to the discomfort of his majesty's loyal subjects.

With these pious prelates of England, Bacon and Coke, and many other learned men in Parliament, legislating against contracts with the devil, with Sir Matthew Hale and Chief Justice North on the bench pronouncing sentence of death against one old woman on expert evidence that she had bewitched and tormented children "in the shape of a bee and a mouse," and another on the testimony of a neighbor who had seen a cat jump into the cottage window of the accused, it may well be said that England was a poor field for practical reformers. Yet to-day, the retention of the death penalty is supported by the arguments of men nurtured in a school of which these were the chief teachers.

EFFORTS FOR AMELIORATION, AND BENEFICENT RESULTS.

In 1770 Sir William Meredith moved for a committee to inquire into the state of the criminal law, which proposed the repeal of a few acts which made certain offenses capital, but there was no parliamentary action. These efforts were merely educational. England was being educated by the writings of Montesquieu, Beccaria, and the commentaries of Sir William Blackstone. The effect of these works upon the judges was that of extending pardon to many sentenced to execution, and the proportion executed to those sentenced was less than before. This action of the judges in the direction of leniency was encouraged by the remarkable speech in Parliament of Sir William Meredith in 1777.

In 1785 was published Madan's "Thoughts on Executive Justice." He laid down five propositions.

First. Punishment, to be effective, should be certain.

Second. That there were more crimes in England than in any other country.

Third. The frequency of crime in England is occasioned by the uncertainty of punishment.

Fourth. The uncertainty of punishment in England is occasioned by the improper lenity of the judges and juries.

Fifth. The laws of England are not severe.

This was followed in 1786 by "Observations upon Thoughts on Executive Justice," by Sir Samuel Romilly, who from that time to his death stood as the champion of criminal-law reform in England.

In 1819 Sir James Mackintosh moved for the appointment of a royal commission to inquire into the operations of the criminal laws. This commission collected a large amount of testimony, and reported in favor of modification and amelioration. Several years elapsed before favorable action was taken upon these recommendations. The commissions of 1834 and 1864 continued these investigations, which contributed materially to the modification and improvement of the criminal laws of England. In handing in the last report, January 8, 1866, the following declaration was moved by Mr. William Ewart, M. P.:

The undersigned members of your Majesty's commission, are of opinion that capital punishment might, safely and with advantage to the community, be at once abolished.

STEPHEN LUSHINGTON,
JOHN BRIGHT,
CHARLES NEATE,
WILLIAM EWART.

The effect of abolishing the penalty of death for offenses long capital by the laws of England, resulted uniformly in fewer commitments and a greater proportion of convictions. These results are not to be accredited to a general improvement in the character and morals of the people, as is shown by tables taken from the Home Office Reports to Parliament for the years 1827 to 1835 inclusive:

First. Noncapital offenses, such as larcenies, etc:

Three years ending with—	Commitments.
1829	46,833
1832	51,623
1835	51,701

Commitments rise from 46,833 to 51,701, indicating an increase of crime in that proportion.

Second. Offenses for which the punishment of death continues to be inflicted, viz., arson, murder, attempted murder, robbery, etc.:

Three years ending with—	Commitments.	Executions.
1829	1,705	108
1832	2,236	120
1835	2,247	102

Commitments rise from 1,705 to 2,247 in spite of the deterrent effects of the death penalty.

Third. Offenses for which the punishment of death was abolished in 1832-'33, viz., coining, forgery, horse stealing, sheep stealing, larcenies above £5 in dwelling, and house breaking:

Three years ending with—	Commitments.	Executions.
1829	4,622	96
1832	4,724	23
1835	4,292	2

Commitments falling from 4,622 to 4,292, a diminution in offenses from which the penalty of death had been removed.

It is also shown by returns to Parliament that in the three years ending 1835, in offenses for which capital punishment is retained, there were forty-two convictions to every one hundred commitments, while for the same period those offenses which had ceased to be capital, for every one hundred commitments there were seventy-four convictions.

The efforts of Sir Samuel Romilly in 1808, and following to the day of his death, "to abolish the penalty of death for stealing from a dwelling house to the amount of 40*s*.," "for stealing privately in a shop to the amount of 5*s*.," and "for stealing upon a navigable river," with other bills of like character, were met with the unyielding opposition of the Lords when these measures finally reached the upper house. The character of the opposition and the influence of those who led the attack on these bills can be well understood by the speech made by Lord Chancellor Eldon, in whose views all the judges concurred, in oppo-

sition to the bill to abolish the punishment of death for stealing privately in a shop to the amount of 5*s.*, in which he said:

If the present bill be carried into effect, then may your lordships expect to see the whole frame of our criminal law invaded and broken in upon. The public of this country, I submit, ought, once for all, to know in what the public criminal code of the country consists, that your lordships may not, time after time and year after year, be distressed with such discussions as the the present.

In the debate on the bill to abolish the death penalty for stealing from a dwelling house to the amount of 40 shillings, Lord Chief Justice Ellenborough declared:

If the theft of 40 shillings from a dwelling house is not punishable by death, the property of every householder in the Kingdom will be left wholly without protection.

Attention may here be called to the commercial spirit which led and overrode all other sentiments in those days, and is still prominent in England, and to some extent in this country. The protection of life and personal property has been subordinated to that of trade and the extension of commerce. The shopkeeper's haberdashery was considered worthy of eight times the protection to be given to the personal effects of an Englishman stored in his house or castle.

The Home Office reports above cited, covering three years before and three years after the abolition of the death penalty for these and similar offences, furnish actual proof that these learned lords were mistaken, and show that their adherence to principles which outraged the best sentiments of humanity prevented that protection to property which later and juster laws have afforded.

In every country in Europe the abolition of the death penalty and the substitution of milder penalties for the punishment of crime has been followed by a diminution of such offenses and increased convictions in proper cases.

The revision of the criminal laws of the several States in this country, which has been going on during the last century, has been followed by like results as to homicides as well as minor crimes. Michigan led in 1847 with total abolition. In 1848 her life convicts constituted 2.71 per cent of her prison population. In 1884, as shown in the official reports, life convicts had decreased to forty-three hundredths of 1 per cent of her prison population. Rhode Island abolished the death penalty in 1852 and Wisconsin in 1853. Iowa abolished it in 1872, when her homicidal crimes averaged 1 in 800,000 of her population; after six years under this beneficent law her homicidal crimes averaged only 1 in 1,200,000 of her population. Then, in a general revision of her criminal laws, she gave to juries the right to affix the death penalty or imprisonment for life for murder: and since then she has had but two executions, but homicides have increased faster than her population, so that the wisdom of repealing her excellent law of 1872 is not apparent.

Maine had for many years practical abolition of the death penalty, although its provision was retained in her laws, which required a year to elapse between conviction and execution, and then to be ordered by the governor. The provision for execution was not mandatory, and few executions were ordered. In 1876 her Legislature abolished capital punishment. In 1883,

moved to action by the maddened passion of a life convict who killed a keeper in prison, her Legislature restored the death penalty by a barely constitutional vote in each house. In 1887 her Legislature again abolished the penalty of death with a two-thirds vote in one house and a three-fourths vote in the other.

Medical men, those who have considered criminal anthropology and mental diseases, are almost unanimously for abolition. The medical societies are discussing the question of abolition to the end that death shall not be inflicted upon the irresponsible and diseased; that the just line of moral responsibility may be drawn between disease and deviltry.

The Homeopathic Medical Society of the State of New York discussed the subject at its annual meeting, held in February, 1891, and without a dissenting voice resolved—

That a committee be appointed to urge upon our Legislature the abrogation of the death penalty, and the substitution of a method of punishment more logical, more reasonable, more humane, more thoroughly effective as a protection, and more in harmony with the enlightened and progressive spirit of the age.

The Eclectic Medical Society of the State of New York had this subject under consideration of a committee for a year, and at its annual meeting held in Albany in March, 1892, agreed to the committee's report, and resolved by an almost unanimous vote—

That it is the recommendation of the Eclectic Medical Society of the State of New York that the Legislature of the State of New York pass an act abolishing capital punishment, substituting therefor life imprisonment, with such well-considered safeguards as will forever prevent any actual murderer, once incarcerated, from regaining the liberty he deservedly forfeited by his own impulsive or fiendish act. And that a committee of three be appointed by the chair to bring this report and its accompanying resolution to the Legislature of the State.

The Medical Society of the State of New York, at its annual meeting in January, 1891, referred the subject to a committee of three of its ex-presidents, of which committee Dr. A. Jacobi was chairman, to consider and report upon the subject at the next annual meeting of the society. This committee submitted an exhaustive report to the annual meeting in January, 1892, which has attracted wide attention in this country and Europe, closing with strong resolutions condemning the death penalty. This report was favorably received by the society, but on motion of those friendly to its conclusions it was referred for final action to the next annual meeting. Of its ultimate adoption by an overwhelming majority there can be no doubt.

CRIMES TO WHICH THE DEATH PENALTY IS AFFIXED BY FEDERAL LAWS.

Mr. Speaker, men generally well-informed on most political topics ask why Congress, which has so little to do with criminal matters, and that in a limited field, should abolish the death penalty when denounced against the few offenses to which it is affixed, and those of a most atrocious character. My answer is that the criminal code of the United States justifies the severe language used by Mirabeau against the English people when, reading of twenty executions taking place one morning in London, he declared "the English are the cruelest race I have ever seen or read of;" so our code is too cruel to be enforced, too cruel to stand. It prescribes the penalty of death for nearly

seventy offenses, for not one of which can its infliction be supported by good reason, justice, or expediency.

I read a letter from the Attorney-General of April 11, 1892, specifying sixteen sections of the code which provide the death penalty for those convicted in the civil courts of the United States.

DEPARTMENT OF JUSTICE,
Washington, D. C., April 11, 1892.

SIR: In reply to your verbal inquiry as to the specific offenses, a violation of which is punishable by death under the laws of the United States, I respectfully submit the following list:

Section 5339, Revised Statutes. 1. Murder in district of country under exclusive jurisdiction of United States. 2. Murder upon the high seas, or place within the admiralty or maritime jurisdiction of the United States. 3. Maliciously striking, stabbing, wounding, poisoning, or shooting at any other person, of which such other person dies, either on land or sea, within or without the United States.

Section 5345, Revised Statutes. Committing rape within any place, or upon any waters specified in section 5339.

Section 5365, Revised Statutes. Owner destroying vessel at sea.

Section 5366, Revised Statutes. Other persons destroying vessel at sea.

Section 5368, Revised Statutes. Piracy under the law of nations.

Section 5369, Revised Statutes. Seaman laying violent hands on his commander.

Section 5370, Revised Statutes. Robbery upon the high seas, or open roadstead, or haven, basin, or bay, or in any river where the sea ebbs and flows, in or upon any vessel.

Section 5371, Revised Statutes. Robbery on shore by crew of piratical vessel.

Section 5372, Revised Statutes. Murder, etc., upon the high seas.

Section 5373, Revised Statutes. Committing murder or robbery, or any act of hostility against the United States, or against any citizen thereof, on the high seas, under color of any commission from any foreign prince or State, or on pretense of authority from any person.

Section 5374, Revised Statutes. Piracy by subjects or citizens of a foreign state.

Section 5375, Revised Statutes. Piracy in confining or detaining negroes on board vessels.

Section 5376, Revised Statutes. Piracy in landing, seizing, etc., negroes on any foreign shore.

Section 5385, Revised Statutes. Arson of dwelling house, within a fort, etc.

Section 5387, Revised Statutes. Arson of vessel of war.

Section 5332, Revised Statutes. Treason.

Very respectfully,

W. H. H. MILLER, *Attorney-General.*

Hon. N. M. CURTIS
House of Representatives.

I offer a communication from the Judge-Advocate-General of the United States Navy, dated April 23, 1892, specifying twenty-two offenses for which naval courts-martial are empowered by law to award the punishment of death. Special attention is called to the closing paragraphs, in which it is stated that notwithstanding the retention on the statute-books of these sanguinary provisions the sentence of death has not been pronounced by a naval court-martial, nor an execution under the provisions of this authority, since October 23, 1849.

Memorandum of crimes or offenses for which naval general courts-martial are empowered by law to award the punishment of death or such other punishment as such court may adjudge, in cases of the conviction thereof, by the court, of any person in the naval service of the United States.

The law relating to the punishments which naval general courts-martial may adjudge upon the conviction of any person in the naval service is contained in the "Articles for the Government of the Navy of the United States," section 1624 of the Revised Statutes.

The crimes or offenses for which naval general courts-martial are empowered, upon the conviction of an offender, to adjudge the punishment of death

or such other punishment as the court may adjudge are contained in Articles 4, 5, and 6 of said articles, as follows:

"ART. 4. The punishment of death, or such other punishment as a court-martial may adjudge, may be inflicted on any person in the naval service—

"First. Who makes, or attempts to make, or unites with, any mutiny or mutinous assembly, or, being witness to or present at any mutiny, does not do his utmost to suppress it, or, knowing of any mutinous assembly or of any intended mutiny, does not immediately communicate his knowledge to his superior or commanding officer;

"Second. Or disobeys the lawful orders of his superior officer;

"Third. Or strikes or assaults, or attempts or threatens to strike or assault, his superior officer while in the execution of the duties of his office;

"Fourth. Or gives any intelligence to, or holds or entertains any intercourse with, an enemy or rebel, without leave from the President, the Secretary of the Navy, the commander-in-chief of the fleet, the commander of the squadron, or, in case of a vessel acting singly, from his commanding officer;

"Fifth. Or receives any message or letter from an enemy or rebel, or, being aware of the unlawful reception of such message or letter, fails to take the earliest opportunity to inform his superior or commanding officer thereof:

"Sixth. Or, in time of war, deserts or entices others to desert;

"Seventh. Or, in time of war, deserts or betrays his trust, or entices or aids others to desert or betray their trust;

"Eighth. Or sleeps upon his watch;

"Ninth. Or leaves his station before being regularly relieved;

"Tenth. Or intentionally or willfully suffers any vessel of the Navy to be stranded, or run upon rocks or shoals, or improperly hazarded; or maliciously or willfully injures any vessel of the Navy, or any part of her tackle, armament, or equipment, whereby the safety of the vessel is hazarded or the lives of the crew exposed to danger;

"Eleventh. Or unlawfully sets on fire, or otherwise unlawfully destroys, any public property not at the time in possession of an enemy, pirate, or rebel;

"Twelfth. Or strikes or attempts to strike the flag to an enemy or rebel, without proper authority, or, when engaged in battle, treacherously yields or pusillanimously cries for quarter;

"Thirteenth. Or, in time of battle, displays cowardice, negligence, or disaffection, or withdraws from or keeps out of danger to which he should expose himself;

"Fourteenth. Or, in time of battle, deserts his duty or station, or entices others to do so;

"Fifteenth. Or does not properly observe the orders of his commanding officer and use his utmost exertions to carry them into execution when ordered to prepare for or join in, or when actually engaged in, battle, or while in sight of an enemy;

"Sixteenth. Or, being in command of a fleet, squadron, or vessel acting singly, neglects, when an engagement is probable or when an armed vessel of an enemy or rebel is in sight, to prepare and clear his ship or ships for action;

"Seventeenth. Or does not, upon signal for battle, use his utmost exertion to join in battle;

"Eighteenth. Or fails to encourage, in his own person, his inferior officers and men to fight courageously;

"Nineteenth. Or does not do his utmost to overtake and capture or destroy any vessel which it is his duty to encounter;

"Twentieth. Or does not afford all practicable relief and assistance to vessels belonging to the United States or their allies when engaged in battle.

"ART. 5. All persons who, in time of war or of rebellion against the supreme authority of the United States, come or are found in the capacity of spies, or who bring or deliver any seducing letter or message from an enemy or rebel, or endeavor to corrupt any person in the Navy to betray his trust, shall suffer death or such other punishment as a court-martial may adjudge.

"ART. 6. If any person belonging to any public vessel of the United States commits the crime of murder without the territorial jurisdiction thereof, he may be tried by court-martial and punished with death."

It will be seen, upon examination of the articles above set forth, that naval general courts-martial are not empowered to inflict the death punishment, except in time of war, for any of the offenses designated in the twenty clauses, contained in the fourth article or for the crime mentioned in the fifth article, other than those stated in the first, second, third, and tenth clauses of the fourth article, and the crime of murder, contained in the sixth article.

Article 50 of the Articles for the Government of the Navy provides that—

"No person shall be sentenced by a court-martial to suffer death, except by the concurrence of two-thirds of the members present, and in the cases

where such punishment is expressly provided in these articles. All other sentences may be determined by a majority of votes."

And it is also provided in article 53 of said articles that—

"No sentence of a general court-martial, extending to the loss of life, or to the dismissal of a commissioned or warrant officer, shall be carried into execution until confirmed by the President. All other sentences of a general court-martial may be carried into execution on confirmation of the commander of the fleet or officer ordering the court."

And by article 54 it is further provided that—

"Every officer who is authorized to convene a general court-martial shall have power, on revision of its proceedings, to remit or mitigate, but not to commute the sentence of any such court which he is authorized to approve and confirm."

With reference to the provision contained in article 53, above set forth, that no sentence of a general court-martial extending to the loss of life shall be carried into execution until confirmed by the President, it is proper to cite the provisions contained in articles 49 and 50 of the Articles for the Government of the Navy, as authorized by "An act for the government of the Navy of the United States," approved March 2, 1799 (Statutes at Large, volume 1, page 709), which read as follows:

"49. The sentence of a court-martial for any capital offense shall not be put in execution until it be confirmed by the commander-in-chief of the fleet. And it shall be the duty of the president of every court-martial to transmit to the commander-in-chief of the fleet and to the head of the Navy Department every sentence which shall be given, with a summary of the evidence and proceedings thereon, as soon as may be.

"50. The commander-in-chief of the fleet, for the time being, shall have power to pardon and remit any sentence of death, in consequence of any of the aforementioned articles."

Article 41 and article 42 of the Articles for the Government of the Navy, embodied in "An act for the better government of the Navy of the United States," approved April 23, 1800 (Statutes at Large, volume 2, page 45), should in this connection be stated, and are as follows:

"41. All sentences of courts-martial, which shall extend to the loss of life, shall require the concurrence of two-thirds of the members present, and no such sentence shall be carried into execution until confirmed by the President of the United States; or, if the trial take place out of the United States, until it be confirmed by the commander of the fleet or squadron. All other sentences may be determined by a majority of votes, and carried into execution on confirmation of the commander of the fleet or officer ordering the court, except such as go to the dismission of a commissioned or warrant officer, which are first to be approved by the President of the United States.

"42. The President of the United States, or, when the trial takes place out of the United States, the commander of the fleet or squadron, shall possess full power to pardon any offense committed against these articles, after conviction, or to mitigate the punishment decreed by a court- martial."

The law vesting the power in the commander of a fleet or squadron, in cases when the trial was had out of the United States, to carry into execution a sentence of a general court-martial extending to loss of life, concurred in by two-thirds of the members of the court present, remained in such commander until the adoption of the existing articles for the government of the Navy contained in section 1624 of the Revised Statutes, which articles are taken from "An act for the better government of the Navy of the United States," approved July 17, 1862 (Statutes at Large, volume 12, page 600). See article 53 of said articles, which is set forth on page 3 of this memorandum.

It appears from an examination of the records of this office, that the punishment of death has not been executed in the case of any person in the naval service of the United States in pursuance of the sentence of a naval general court-martial, since the 23d day of October, 1849. On the date last mentioned, two seamen, enlisted men in the Navy and members of the crew of the United States schooner Ewing, then in the harbor of San Francisco, Cal., and belonging to the Pacific squadron, which was then in command of Commodore Thomas Ap Catesby Jones, United States Navy suffered the death penalty. The two seamen referred to, were tried before a naval general court-martial convened on board the United States sloop-of-war Warren, in the harbor of San Francisco, on October 10, 1849, under an order issued by Commodore Jones, the commander-in-chief of said squadron, upon charges (1) "Mutiny with intent to kill;" (2) "Desertion with an attempt to kill, and running away with a boat, the property of the United States." The court found both of the seamen aforesaid guilty of the charges preferred against them, and sentenced each of them "to be hung by the neck until dead."

The sentences of the general court-martial in these cases having been ap-

proved by Commodore Jones, the commander-in-chief of the squadron, were carried out accordingly by the execution of both of the men on board vessels of the squadron in the harbor aforesaid on October 23, 1849.

WM. B. REMEY,
Judge-Advocate-General.

NAVY DEPARTMENT,
OFFICE OF THE JUDGE-ADVOCATE-GENERAL,
Washington, April 23, 1892.

I offer a letter from the Assistant Secretary of War, dated February 25, 1892, specifying twenty-five offenses for which a court-martial is authorized to prescribe the punishment of death:

WAR DEPARTMENT,
Washington, February 25, 1892.

SIR: In response to your inquiry as to what offenses are by the existing law made capitally punishable by sentence of a military court, I have the honor to state as follows;

In article 96 of the Code of Articles of War, it is provided that no person shall be sentenced to death by court-martial, except in the cases "expressly mentioned" in the code. The power of adjudging this penalty is elsewhere, (Articles 80-83), restricted to general courts-martial.

This punishment is "expressly mentioned" in the articles as follows:

1. It is expressly and exclusively required to be adjudged, on conviction, for the offense of forcing a safeguard, by article 57; and for the offense of the spy, by section 1343, Revised Statutes, the concluding provision of the military code.

2. It is expressly authorized to be adjudged at the discretion of the court, by the following articles and for the following offenses:

By article 21: For striking or assaulting a superior officer, or for disobeying his lawful command.

By article 22: For mutiny.

By article 23: For failing to suppress or give information of mutiny.

By article 39: For sleeping on post, or leaving post without authority, of a sentinel.

By article 41: For occasioning false alarms in camp, etc.

By article 42: For misbehavior before the enemy, and kindred offenses, and for leaving post or colors to plunder or pillage.

By article 43: For compelling a commander to surrender or abandon a post.

By article 44: For disclosing a watchword to an unauthorized person or giving a false watchword.

By article 45: For relieving the enemy with money, food, or ammunition, or harboring or protecting an enemy.

By article 46: For holding correspondence with or giving intelligence to the enemy.

By article 47: For desertion "in time of war."

By article 49: For abandoning the service by an officer, without authority, on a mere tender of resignation—in time of war.

By article 51: For advising or persuading another to desert—in time of war.

By article 56: For doing violence to person bringing provisions or other necessaries into camp, etc., "in foreign parts."

By article 58: For murder, manslaughter, arson, robbery, larceny, etc., where the death penalty is required to be imposed by the local law—in time of war.

In some of these articles the infliction of the death penalty is expressly limited to time of war, and in others, the particular offense or class of offenses made punishable is of such a character that it could scarcely be committed except at such a time. There are thus substantially but four articles—the twenty-first, twenty-second, twenty-third, and thirty-ninth—for the offenses specified in which the death penalty may be adjudged at any time, viz., in peace as well as war. As observed, however in Winthrop's Military Law, volume 1, page 589, where the subject of this penalty is discussed, the offenses designated in these four articles will, when committed in time of peace, "most rarely be so aggravated as to induce a court-martial to assign the extreme penalty." And "the result is that this punishment is in our military law and practice reserved almost exclusively for the purposes of the administration of justice in time of war."

As to military commissions, it may be added, these are tribunals unknown to the existing law. They are resorted to only in time of war for the trial of cases not within the jurisdiction of courts-martial, and their power to adjudge the death sentence or other punishment, where not controlled by

statute, is derived solely from the laws and usages of war. As to the function and power of punishment of these courts, as exercised during the late war, I would refer you to Winthrop's Military Law, volume 2, pages 57–82.

Very respectfully, your obedient servant,

L. A. GRANT.
Assistant Secretary of War.

Hon. N. M. CURTIS,
House of Representatives, Washington, D. C.

I submit a list of executions by United States military authorities during the late war:

Offense.	White troops.				Colored troops.			Aggregate.
	Mode of execution.			Total.	Mode of execution.		Total.	
	Shot.	Hanged.	Not stated.		Shot.	Hanged.		
Desertion	122	16	.....	138	1	.....	1	139
Murder	13	28	.....	41	6	20	26	67
Rape	3	6	.....	9	6	4	10	19
Mutiny	5	.....	.....	5	14	.....	14	19
Rape and theft	3	.....	.....	3	.....	.....	.....	3
Desertion and attempted murder	2	.....	.....	2	.....	.....	.....	2
Spy	2	.....	.....	2	.....	.....	.....	2
Violation of 9th article of war	1	.....	.....	1	.....	.....	.....	1
Violation of 7th and 2d articles of war	1	.....	.....	1	.....	.....	.....	1
Theft	.....	1	.....	1	.....	.....	.....	1
Desertion and rape	.....	1	.....	1	.....	.....	.....	1
Desertion and theft	1	.....	.....	1	.....	.....	.....	1
Desertion and highway robbery	1	.....	.....	1	.....	.....	.....	1
Desertion and murder	.....	1	.....	1	.....	1	1	2
Desertion and pillage	1	.....	.....	1	.....	.....	.....	1
Aiding desertion	1	.....	.....	1	.....	.....	.....	1
Pillage	1	.....	.....	1	.....	.....	.....	1
Acting as spy	1	.....	.....	1	.....	.....	.....	1
Rape and murder	.....	.....	.....	.....	.....	1	1	1
Not stated	2	.....	1	3	.....	.....	.....	3
Total	160	53	1	214	27	26	53	267

In addition to the several sections which authorize the infliction of the death penalty by the United States civil courts, military and naval courts-martial, we have sections 4083 to 4130, inclusive, enacted in compliance with treaties entered into with the powers of Algiers, the Barbary States, China, Japan, Madagascar, Morocco, Muscat, Persia, Siam, Tripoli, Tunis, the Islands of the South Pacific and Indian Oceans, which are not dependencies of Christian nations, giving extraterritorial powers to United States ministers and consular officers, authorizing them to administer justice at their several stations, and to try American citizens or those enrolled under the American flag charged with crime, and to award imprisonment for life or the punishment of death.

These consular courts consist of a United States Consul, and from one to four United States citizens he may ask to sit with

him on the trial. The consul, however, awards the sentence, from which there is no appeal, except from the consular courts in China and Japan, which are appealable to the United States. district court of California. From other consular courts there is no appeal, except to the Executive for clemency. The Ross case, decided by the Supreme Court, October term, 1890, sustains the constitutionality of these sections. This case was brought within the jurisdiction of the Supreme Court of the United States after the prisoner had accepted a commutation of his sentence of death to a term of life imprisonment. When he was brought to the United States for incarceration in the Albany penitentiary he applied for a writ of habeas corpus, alleging that he was deprived of his liberty in violation of the Constitution; that he had been deprived of his liberty without a trial by jury.

This decision sustaining the provisions of this law is most important, as it shows that a citizen of the United States, or a person enrolled as a seaman under its flag, when in a heathen country, can be deprived of his life or liberty without those forms of law guaranteed to every citizen within the territory of the United States not actually in the military or naval service. When it is considered that these officers are appointed on account of their knowledge of commercial affairs, without regard to their knowledge of the principles of law, its practice, or the administration of justice, it must be regarded as a dangerous exercise of the constitutional right of Congress to commit the rights of American citizens, their lives and their liberties, to such officials, and without appeal.

ADVOCATES OF ABOLITION.

The advocates of this principle include the greatest names in European and American history. But to Beccaria, Sir William Meredith, Sir Samuel Romilly, Sir James McIntosh, Basil Montagu, Jeremy Bentham, Edward Livingston, and Robert Rantoul, jr., whose writings and active exertions have done so much to promote this reform, will be given the greatest credit when this principle shall have been adopted, as it surely will be, by the Christian nations of the earth. Hundreds of others deserve to be mentioned with honor in this connection for their labors in enlightening and instructing their fellows.

A bill containing this provision was introduced in Congress by Edward Livingston, a Senator from the State of Louisiana, on the 3d of March, 1831, in reference to which he said:

> It was his intention, had time permitted, to have developed the principles of the bill, some of which would be found extremely important. Under present circumstances he would confine himself, saying that it laid down general principles applicable to the subject, provided for the cases of those general acts which ought to be punished under the powers vested in the General Government, in whatever part of the United States they may be committed, and those which may be committed in places under the exclusive jurisdiction of the United States; including, of course, the District of Columbia, that it accurately defined all offenses, provided as well for their prevention as their punishment. As these were entirely new he wished, when the document was put into the hands of Senators, they would pay particular attention to its provisions as well as to one most important principle which pervades the whole, the total abolition of the punishment of death. To this he invited the Senators to give a most serious reflection that they might be prepared to meet the discussion which he should think it a duty to invite at the next session.

While conservative influences have been able to retain the punishment of death for murder in most of the States, and in some for one other crime, it has been abolished for other offenses; but there has been no legislation by Congress to improve the system of our criminal laws. There has been a constant effort in most of the States to escape the evil influences of a system which, like the basilisk's charm, has kept legislatures under its baneful influence; but a philosophical public has compelled from time to time the curtailing of its brutalizing tendencies. The pomp and parade with which executions were once attended have been dispensed with to the great gain of society. Skillful and learned men have investigated the different methods of execution, to find one whose influence would be the least harmful and terrifying.

Had the energies given to these investigations been properly expended in seeking for the best system of governing men, and the adoption of the principles which would best secure life and property without regard to the instruments of destruction, there would not at this time be found anyone to advocate the retention of the penalty of death. The abandonment of public executions lessened commitments, and there was a consequent falling off in executions. In my own State of New York, with a strong public sentiment against the death penalty, the Legislature failed to heed it, and sought to satisfy by introducing a more humane method of execution. The friends of abolition first moved to recommit the bill with instructions to report a bill abolishing capital punishment. When that motion failed, they supported the bill establishing the new electrocution law, and I believe to-day there are few friends of abolition who would willingly see the rope substituted for the present method.

To go as far as possible to meet the views of the friends of abolition and still retain judicial execution, by which the death of criminals continues to multiply crimes, there was enacted a provision not only for continuing private executions, but one to forbid the publication of the details of an execution. How vain the attempt. The criminal maudlinism of the age demanded to know all the horrible details connected with these brutal practices, performed in the name of law and justice; and in the popular branch of the Legislature one of the first bills passed at the last session, by a vote of 103 to 2, was to strike out the provisions of the law prohibiting the publication of the details of an execution.

The large number of executions which took place in the Army during the late war furnishes no evidence that the punishment of death is essential for the enforcement of discipline, the maintenance of efficiency, or the safety of the army. These executions were, in a large proportion of cases, inflicted because the laws governing the army prescribed it specifically under certain articles of war. Had there been no such direction, no suggestion that the death penalty was the one best calculated to bring the speediest and surest correction of disorder, it would not have been so frequently enforced. The Articles of War have, to my personal knowledge, often been consulted before preparing charges and specifications, and the charge of "conduct prejudicial to good order and military discipline" used in-

stead of that naming the specific offense, because the proof to sustain the specification might have supported a graver charge, and carried the sentence of death.

I do not, as many may think, refer to officers lacking the proper military spirit or those qualities necessary to discipline, to command, and to lead, which together make the good, the successful soldier. The martial spirit is not cultivated by instruments of torture, nor the infliction of ignominious death. Think you, sir, that the recruit instructed to obey promptly the lawful orders of his superior officer: to defend his flag in the face of all danger, to despise death and fear only dishonor, that his manhood, his self-respect, will be increased and strengthened by being informed that his devotion, his valor, may have the same reward as the dastardly coward—a violent death? Will not the sublimity of the one be degraded to the ignominy of the other?

The death penalty is not suitable for desertion. Men who desert their flag should not be deemed even worthy of dying in the presence of their comrades. Ignominious toil, not death, should be their punisnment. The spy, in military operations, has, I think, been improperly regarded as one upon whom death should be promptly, unhesitatingly inflicted. This view of his case has no stronger reason to support it than that of giving no quarter in battle. The spy represents more than one personality: he goes out under the orders of his commanding officer, urged and encouraged by promises of preferment and reward. His safe detention, the preservation of his life, may enable the commander to obtain valuable information respecting the enemy in whose service the spy is employed, but nothing can be gained by his execution. To be retained in the hands of an enemy, and put to a degrading service, will be more odious than the infliction of death, for brave men challenge death in the pursuit of duty, ambition, or glory.

In this respect only, I am happy to say, I differ with the distinguished soldier, the general-in-chief of our Army, as shown by his letter of March 16, 1892. It justifies the high opinion of the profession of arms expressed by Beccaria, who said, at a time when torture was practiced in some form by all nations, England only using that of pressure to extort a plea, "that in the government of armies torture was not used. A strange phenomenon, that these men, familiar with blood and accustomed to slaughter, should teach humanity to the sons of peace." It indicates the combination of those rare qualities which make the soldier, who, though called upon to perform the cruelest service required for the support of organized and legitimate government, is, nevertheless, the tenderest, the gentlest, and most generous of men, and sooner learns the governing spirit and better understands the quality of human nature than men in any other profession or calling:

HEADQUARTERS OF THE ARMY,
Washington, D. C., March 16, 1892.

MY DEAR SIR: In reference to the bill introduced by you in the House March 14, 1892, entitled "A bill to define the crimes of murder in the first and second degree, manslaughter, and providing punishment therefor, and to abolish the punishment of death," I take pleasure in assuring you of my cordial concurrence in the general object to be accomplished by the passage of such a bill.

Long experience in the military service and observation of the adminis-

tration of justice throughout the country has produced in my mind a continually increasing conviction that the death penalty is in general unnecessary, and also less effective in preventing crime than imprisonment, for the reason that it is far less certain to be executed. I think all must admit, if it is true that the death penalty is unnecessary and even less effective than some other mode of punishment, that fact is quite sufficient reason for abolishing it.

Man has no right to take the life of his fellow-man, except in self-defense and for the protection of society. It is also, I believe, generally true that the more experience men have in the sacrifice of human life, as in battle, the more they shrink from the cold-blooded execution of a fellow-man. The brave and patriotic soldier offers his own life and that of his comrades freely in the cause of his country, and in the same cause he hesitates not to take the lives of his enemies in open battle; but the moment the result is accomplished he becomes the most humane of men in face of the question of taking any more lives in cold blood.

I have observed that your bill proposes no exceptions whatever to the abolition of the death penalty. Perhaps this has been based upon the belief, in which I concur, that such punishment is not necessary under any circumstances in time of peace, and if necessary in time of war, it can be provided for by special enactment. I am not prepared to say that the death penalty is not necessary in war under some circumstances, and for certain exceptional offenses, which offenses endanger the success of military operations and even the safety of an army, in which cases the certain and immediate execution of the death penalty may be the only sufficient deterrent from the commission of such crimes. I do not think it would be wise to take from the commander of an army in the field the power to inflict such punishment when he finds it necessary; but I do not know any other case in which, in my judgment, the substitution of imprisonment for life in place of the death penalty would not increase rather than diminish the deterrent effect upon those disposed to commit crime.

Yours, very truly.

J. M. SCHOFIELD.
Major-General, United States Army.

Gen. N. M. CURTIS, M. C.,
House of Representatives.

The Navy has had no execution since 1849. During these years our flag has been carried to every clime, our ships have swung at anchor in every port, our officers and seamen have been brought in contact with the people of the most cultivated and enlightened nations, and with the wildest savages, without imbibing any of the brutal spirit which finds expression in torture and the infliction of death. The Navy has, in four years of war, with conspicuous devotion and efficiency, not only maintained all its past glory, but added new luster and honor by acts of personal devotion and bravery, performed by men in all the grades from ordinary seamen to admirals commanding fleets, and stands second to the navy of no country in those qualities and attainments which give efficiency, maintain honor, and win victories. The Navy has for forty-five years been disciplined and governed on a higher plane than the articles prescribed by Congress provide. Obsolete, useless, and barbarous laws—banish them from the code of those who, despite their lurking presence, have wholly neglected to enforce them. The abolition of flogging as an authorized punishment for offenses in the Army in 1839 and in the Navy in 1850, however much doubted at the time by conservatives, contributed much to increase the *morale* of both the Army and Navy.

PRACTICAL OBJECTIONS TO THE DEATH PENALITY.

Mr. Speaker, the subject before the House is one to which I have given many years of close study and serious consideration, to which I have brought an experience gained in the field, in the administration of martial law, while serving in all grades from the command of a company to that of a department, administer-

ing justice over a large territory at the close of hostilities, without the aid of civil law or its officers, as well as many years in civil life as a legislator and administrator in the enforcement of law, all of which has given me great opportunity to study men, their impulses, and their actions. I have known them in all classes, from prisoners to presidents. I have never found among those blessed with "sound minds in healthy bodies," one absolutely incorrigible, not one in whom might not be found some virtue, which, with proper culture, would grow and enliven and improve his whole being. Nor have I ever seen a man in whose character and qualities there was no improvement to be suggested.

The severe penalties of our laws defeat the ends for which they are enacted. With a penalty which men of humane sentiments can not inflict, and therefore are excused from jury duty, places the administration of our criminal laws in their final determination, in the hands of the stoical and indifferent. Judges say that of men drawn on juries, from one-quarter to three-fourths of the number, generally the most intelligent, are excused because of conscientious scruples against the infliction of the death penalty, and as a consequence the panel is composed of men least qualified to decide the important questions submitted to their determination.

The object of the law is defeated when it gives to any man on his own motion power to excuse himself from performing the highest and most important duty pertaining to the enforcement of the laws. Last fall, in the city of Denver, on the trial of a man charged with the murder of a woman, in which trials convictions are ten times more certainly obtained than in those for the murder of men, of twelve hundred drawn, eleven hundred were excused because of their objections to the infliction of the penalty of death. Canning better knew the impulses of the human heart than his staid associates in Parliament when he assured them—

> It is vain to suppose that jurors will enforce laws which are repugnant to the best feelings of our nature.

Sydney Smith gave the true standard by which to affix efficient punishment:

> The efficient maximum of punishment is not what the legislature chooses to enact, but what the great mass of the people think that maximum ought to be.

Legislators have disregarded the demands for a revision of our laws until we have been compelled to enlarge our penitentiaries to receive the dupes of great criminals, while the teachers, through the imperfection of our laws, and not by any means the inefficiency or neglect of the officers of justice, are enabled to escape its penalties. The defeat of the law in its proper enforcement against a single offense tends to its demoralization in every part. Take away irredeemable punishments, so that no man can, by stating his honest convictions or falsely representing his sensibilities, excuse himself from jury service. When this is done, and not till then, you may discard that absurd fiction adhered to in a free nation that has no classes, with all the tenacity of the Barons when the Crown and royalty oppressed the yeoman and the vassal. Remove from our practice the absurd provision that the prisoner shall be first secured against the enmity of the State; give him a sufficient number of challenges, to insure the exclusion from the

jury of all who knew him and might be prejudiced by a knowledge of his past life, and fill your jury boxes with intelligent, fair-minded men, so that it shall not be, as within a short time, when an intelligent laborer was excused because he read a daily paper, and one who could not read and did not know the name of the mayor of his city, or the name of any man who had been its mayor, nor the name of the governor of his State, or of any man who had been its governor, was accepted to sit on a jury impaneled to try a man charged with the crime of murder.

Mr. Speaker, I have from no indifference to that important feature of criminal jurisprudence—the reformation of the criminal—neglected to give that subject consideration in these remarks. The criminal requires, for the general good and the soundest public policy, that suitable provision be made for his employment and reformation. But in Federal legislation, restricted to a narrow field, its consideration is not so important as in States in whose penitentiaries Federal prisoners are detained, excepting those in the jail in the District of Columbia. While thoroughly believing that prisoners should have the benefit of reformatory treatment and influences, I am not of the class of those who believe a prisoner's life should be one of expensive luxury and slothful idleness. The jail of the District of Columbia, under Federal control, is, I feel justified in saying, entitled to be classed with the highest grade of schools for crime and idleness. There prisoners are kept in cells without labor, living at an expense and in a manner in which no honest laboring man can support a wife and child on $9 weekly wages. When these prisoners are discharged, they have lost all inclination for honest labor, and generally seek to live at the public expense by stealing or robbery, knowing that the worst fate to befall them can be no harder than a return to jail, to fatten in restricted quarters at the public charge. As bad as all this is, it is not so bad and impolitic as having the laws of the country enacted by consulting the fears and terrifying apprehensions of prisoners, with a view of ascertaining what punishment will bring them the greatest sorrow. The good order of society the safety of the State is best promoted and secured by consulting the wise, the virtuous, and the prudent. A punishment to be deterrent should be exemplary, one which restrains, but does not destroy. Therefore the death penalty, horrifying to the spectators, the friends, and the victim is of short duration, and soon forgotten; while imprisonment protects both by warning and example, as stated by Sir William Meredith:

> The end of all punishment is example; of the two modes of punishment I shall prefer that which is most profitable in point of example. Allowing, then, the punishment of death its utmost force, it is only short and momentary: that of labor, permanent; and so much more example is gained in him who is reserved for labor than in him who is put to death as there are hours in the life of the one beyond the short moment of the other's death.

The dread so many express of permitting the murderer to live so long as the pardoning power is retained has little to justify it. The power to pardon is a provision in the organic law, and can only be reached by constitutional amendment. Those who fear its improper use should know that it is more generally exercised in capital States than it has been or is likely to be in noncapital States. I quite agree with those who desire to see it re-

stricted, and I have the confident opinion that it will be when its promoting cause—capital punishment—for which and only on account of which pardons were first instituted and have since come into general use to thwart and impede justice.

Have man's explorations in the fields of science and philosophy, in his contemplation of natural laws, the gospels, or revelation, yet discovered a standard wherewith accurately to measure the value of a human life? It has been said that the riches of the world are of less value than the salvation of a soul. Are we then, acting within the limits of the great organic law, justified in prescribing a standard and directing its application, on the infallibility of human judgment, if "to shorten a human life puts in jeopardy a human soul?" We are not justified in imitating even in our laws the acts of the vicious; the wise and virtuous will never do it.

I shall add, under the generous permission of the House, authorizing me to extend my remarks in the RECORD, an appendix, giving the opinions of men on this subject whose judgment will command that respect we all give to the opinion of those whose lives have been devoted to humanity, to civilization, to progress, to the establishing and maintaining of constitutional liberty.

I ask the deliberate judgment of this House on this important principle, that they will without prejudice examine it from every side, and bring to its consideration the facts of history, the experience of States blessed with its beneficent provisions, that we may contribute to the urgent duty of bringing this nation to the side, at least, if not placing her in advance of those we sometimes think less enlightened than our own. Let us enact just laws, whose penalties shall be enforced with certainty against those who violate them, and secure to the orderly and well disposed the opportunity "to enjoy in safety and tranquillity their natural rights and the blessings of life."

APPENDIX.

The following extracts are inserted at the request of several members who have expressed a desire to know the opinions of prominent men on this subject whose works are not readily accessible:

God commandeth us that we should not kill: and if a man would understand killing by this commandment of God to be forbidden, after no larger wise than man's constitution define killing to be lawful, then why may it not likewise by man's constitution be determined after what sort may be lawful? For whereas by the permission of God no man neither hath the power to kill, neither himself nor yet any other man, then if a law made by the consent of men, concerning slaughter of men, ought to be of such strength, force, and virtue, that they which—contrary to the commandment of God—have killed those whom this constitution of man commanded to be killed, be clean, quit and exempt out of the bonds and danger of God's commandment; shall it not, then, by this reason follow that the power of God's commandments shall extend no further than man's laws doth define and permit? And so shall it come to pass that, in like manner, man's constitution in all things shall determine how far the observation of all God's commandments shall extend. Now you have heard the reasons why I think this punishment (of death) unlawful.

—*Sir Thomas More*, 1516.

In subjects of this nature we are to consider, not what the individual is, nor what he may have done; we are to consider only what is right for public example and private safety.

Whether hanging ever did, or can, answer any good purpose, I doubt; but

the cruel exhibition of every execution day is a proof that hanging carries no terror with it. And I am confident that every new sanguinary law operates as an encouragement to commit capital offenses: for it is not the mode but the certainty of punishment that creates terror. What men know they must endure they fear; what they think they can escape they despise. The multiplicity of our hanging laws has produced two things, frequency of condemnation and frequent pardons. As hope is the first and greatest spring of action, if it were so that out of twenty convicts one only was to be pardoned, the thief would say, "Why may not I be that one?" But since as our laws are actually administered not one in twenty is executed, the thief acts on the chance of twenty to one in his favor, he acts on a fair and reasonable presumption of indemnity; and I verily believe that the confident hope of indemnity is the cause of nineteen in twenty robberies that are committed.

But if we look to the executions themselves, what example do they give? The thief dies either hardened or penitent. We are not to consider such reflections as occur to reasonable and good men, but such impressions as are made on the thoughtless, the desperate, and the wicked. These men look on the hardened villain with envy and admiration. All that admiration and contempt of death with which heroes and martyrs inspire good men in a good cause, the abandoned villain feels in seeing a desperado like himself meet death with intrepidity. The penitent thief, on the other hand, often makes the sober villain think in this way: Himself oppressed with poverty and want he sees a man die with that penitence which promises pardon for his sins here and happiness hereafter; and straight he thinks that by robbery, forgery, or murder he can relieve all his wants, and if he be brought to justice the punishment will be short and trifling and the reward eternal.

When a member of Parliament brings in a new hanging law, he begins with mentioning some injury that may be done to private property, for which a man is not yet liable to be hanged; and then proposes the gallows as the specific and infallible means of cure and prevention. But the bill, in progress of time, makes crimes capital that scarcely deserves whipping. For instance, the shoplifting act was to prevent bankers, and silversmiths, and other shops, where there are commonly goods of great value, from being robbed, but it goes so far as to make it death to lift anything off a counter with intent to steal.

—*Sir William Meredith*, in Parliament, 1777.

But to these we may add, further, that the use of capital punishments argues a want of capacity in the legislature. It is rather an expedient to get rid of certain inconveniences in society than an attempt to remedy them. It is easy enough, indeed, for the magistrate to extirpate mankind, but it is his business to amend them and make them happy. "It is quackery in government," says Blackstone, "to apply too frequently the same universal remedy, the *ultimum supplicum*, and that magistrate must be esteemed both a weak and a cruel surgeon who cuts off every limb, which through ignorance or indolence he will not attempt to cure."

And as frequent capital punishment is an argument of the want of regular police, and a relic of barbarism in the constitution of any society, so its being obstinately continued in use among us tend to retain among the common people those barbarous manners from which this kind of punishment originally took its rise, and to check the progress of that humanity of spirit which, happily for mankind, has of late been making such rapid advances in our part of the world. Let, then, the spirit of our punishments correspond with the spirit of the times, in order that we may sooner attain that perfection of universal charity, which ought to be the governing principle of the human mind.

—*Rev. William Turner.*

Criminal jurisprudence has, within the last twenty years, become a very popular study throughout Europe, and the cultivation of it has been generally attended with very sensible and very beneficial effects. In proportion as men have reflected and reasoned upon this important subject the absurd and barbarous notions of justice, which prevailed for ages, have been exploded and humane and rational principles have been adopted in their stead. That criminal prosecutions ought always to be carried on for the sake of the public and never to gratify the passions of individuals; that the primary object of the legislature should be to prevent crimes and not to chastise criminals; that that object can not possibly be attained by the mere terror of punishment; and that unless a just proportion be observed between the various degrees of crime in the penalties appointed for them the law must serve to excite rather than repress guilt, are truths so generally received that they are come to be considered almost as axioms of criminal law.

But considerable as has been the progress of these principles in other parts

of Europe, they have not yet produced in this country any melioration of the system of our penal laws. The most glaring defects in those laws have not escaped observation, but few have attempted to remove them, and none have been successful in their attempts, and the only beneficial effect which has yet been produced in England, is a desire in the Crown, and in its ministers, the judges, to remedy some of those defects by their mode of executing the laws, and particularly by a mitigation of that indiscriminating severity which, while it inflicts the same punishment on a pickpocket as on a parricide, confounds all ideas of justice, and renders the laws objects, not of veneration and love, but of horror and aversion.

A more permanent and a more certain correction of those defects would be so great a national benefit as one would have thought every good and reflecting citizen must ardently have wished for. At least one would have supposed that humanity, as well as patriotism, must have forbidden any endeavors to cloud the prospect of such a reformation, and much more, any efforts to lay restraint upon the sovereign in executing, according to his oath, justice in mercy, and to inforce that *summum jus* which, where the laws are such as constitute the criminal code of England, must ever prove *summum injuria*.

This ungrateful task, however, has been lately undertaken, and an attempt has been made to restore the law to all its sanguinary rigor by the author of Thoughts on Executive Justice with respect to our criminal laws. A work proceeding on principles which are now so little prevalent and breathing a spirit so contrary to the genius of the present times that I should have classed it amongst those performances, with which every literary age has been infested, and which are calculated to render the authors of them celebrated only for the singularity of their opinions, and should have therefore left it to sink into that oblivion to which such compositions seldom fail to be soon consigned, had I not found that the warmth and the earnestness of the writer's style had gained him converts, and that some of the learned judges, to whom his word is addressed, had seemed inclined to try the terrible experiment which he recommends. Errors which produce such effects are not to be despised as harmless, and it is the duty of every man who has the use of reason and who sees their fallacy to expose and to refute them.

He first asserts that the penal laws of this country are excellent, and that they have no severity, but of the most wholesome kind; and this serves as the foundation of that proposition which is the capital object of his work, namely, that those laws ought to be strictly executed, so that the certainty of punishment may operate to the prevention of crimes. If the former of these positions were true no man of common understanding could dispute the latter; for, if laws be perfect, they ought undoubtedly to be religiously observed; but if our laws, instead of being excellent, should appear to be, as it is easy to demonstrate that they are, in many instances, unreasonably severe, and such as that the punishment bears no proportion to the crime, it must surely follow that the strict execution of them is neither expedient nor even possible.

All punishment is an evil, but is yet necessary, to prevent crimes, which are a greater evil. Whenever the legislature therefore appoints, for any crime, a punishment more severe than is requisite to prevent the commission of it, it is the author of unnecessary evil. If it do this knowingly, it is chargeable with wanton cruelty and injustice; if from ignorance, and a want of proper attention to the subject, it is guilty of a very criminal neglect. If these principles be just, the legislature of Great Britain must in one or other of these ways, be culpable, unless it be impossible to prevent theft by any punishment less severe than death.

The author of the "Thoughts on Executive Justice" seems to think that it is impossible, and that these severities are therefore to be justified on the ground of necessity. But experience shows the erroneousness of this opinion, because in several European states, where the punishment of death is never inflicted but for the most atrocious crimes, these lesser offenses are very rare; while in England, where they are punished with death, we see them every day committed; and when, in the reign of Henry VIII, so many criminals were executed that their numbers were computed to amount to two thousand every year, crimes seem to multiply with the number of executions. "So dreadful a list of capital crimes," says Mr. Justice Blackstone, after having lamented that they are so numerous, "instead of diminishing, increases the number of offenders."

Nor is this a phenomenon very difficult to be accounted for; in proportion as these spectacles are frequent, the impression which they make upon the public is faint, the effect of the example is lost, and the blood of many citizens is spilt without any benefit to mankind. But this is not all; the frequent exhibition of these horrid scenes can not be indifferent; if they do not reform they must corrupt. The spectators of them become familiarized

with bloodshed and learn to look upon the destruction of a fellow-creature with unfeeling indifference. They think, as the laws teach them to think, that the life of a fellow-citizen is of little value, and they imagine they see revenge sanctified by the legislature, for to what other motive can they ascribe the infliction of the severest punishments for the slightest injuries? And where the moral character of a people is depraved crimes must be frequent and atrocious.

—*Sir Samuel Romilly*, 1786

Since my arrival here in May, 1804, the punishment of death has not been inflicted by this court. Now, the population subject to our jurisdiction, either locally or personally, can not be estimated at less than 200,000 persons. Whether any evil consequence has yet arisen from so unusual—and in British dominions unexampled—a circumstance as a disuse of capital punishment, for so long a period as seven years, among a population so considerable, is a question which you are entitled to ask, and to which I have the means of affording you a satisfactory answer.

The criminal records go back to the year 1756. From May, 1756, to May, 1763, the capital convictions amounted to 141 and the executions were 47. The annual average of persons who suffered death was almost 7, and the annual average of capital crimes ascertained to have been perpetrated was nearly 20. From May, 1804, to May, 1811, there have been 109 capital convictions. The annual average, therefore, of capital crimes, legally proved to have been perpetrated during that period, is between 15 and 16. During this period there has been no capital execution. But as the population of this island has much more than doubled during the last fifty years, the annual average of capital convictions during the last seven years ought to have been 40 in order to show the same proportion of criminality with that of the first seven years.

The punishment of death is principally intended to prevent the more violent and atrocious crimes. From May, 1797, there were 18 convictions for murder, of which I omit 2, as of a very particular kind. In that period there were 12 capital executions. From May, 1804, to May, 1811, there were 6 convictions for murder, omitting one which was considered by the jury as in substance a case of manslaughter with some aggravation. The murders in the former period were, therefore, very nearly as three to one to those in the latter, in which no capital punishment was inflicted; then the murders of the last seven years will be 8, while those of the former seven years will be 16. This small experiment has, therefore, been made without any diminution of the security of the lives and properties of men. Two hundred thousand men have been governed for seven years without a capital punishment and without any increase of crimes. If any experience has been acquired it has been safely and innocently gained.

—*Sir James Mackintosh*, charge to the grand jury of the island of Bombay, July 29, 1811.

If the evil of the punishment exceed the evil of the offense, the legislator will have produced more suffering than he has prevented. He will have purchased the exemption from one evil at the price of a greater evil.

No person engages in crime, but from the hope of impunity; if the punishment consisted merely in depriving the offender of the spoil which he has gained, and this punishment were invariably inflicted, such crimes would no longer exist.

The more the certainty can be increased, the more the severity may be diminished. Punishment ought to be inflicted soon after the crime is committed; the impression upon the mind is weakened by the distance; and the distance of the punishment adds to its uncertainty by giving new chances of escape.

A real punishment which is not an apparent punishment is lost to the public; the great art consists in augmenting the apparent punishment without augmenting the real punishment.

The punishment ought to be economical—that is, it ought to have only the degree of severity which is absolutely necessary for attaining its object. Everything which exceeds the necessity is not only so much superfluous evil, but produces a multitude of inconveniences that defeat the ends of justice.

The punishment ought to be remissible. It is requisite that the suffering should not be absolutely irreparable, in cases in which it may happen to be discovered, that it was inflicted without lawful cause. So longs as proofs are susceptible of imperfection, so long as appearances may be deceitful, so long as men have no certain criterion for distinguishing truth from falsehood, one of the first securities which they reciprocally owe to each other, is not to admit, without absolute necessity, punishments absolutely irrepar-

able. Have we not seen all the appearances of the crime heaped upon the head of the accused, where innocence has been proved when it was too late to do more than lament over the errors of a presumptuous precipitation? Feeble and short-sighted as we are, we judge as limited beings, and punish as if we were infallible.

The more we examine the punishment of death, the more we shall be induced to adopt the opinion of Beccaria. This subject is so well discussed in his work that there is scarcely any necessity for further investigation.

The infliction of this punishment originated in resentment, indulging itself in rigor; and in sloth, which, in the rapid destruction of offenders, found the great advantage of avoiding all thought. Death! always death! This requires neither the exertion of reason nor the subjugation of passion.

I should astonish my readers if I were to expose to them the penal code of a nation celebrated for its humanity and its intelligence; we might there expect to find the greatest proportion between offenses and punishments; but, whatever may be our expectations, we should see this proportion continually violated, and the punishment of death inflicted upon the most trifling offenses. The consequence is, that the sweetness of the national character being in contradiction to the laws, the manners triumph and the laws are eluded. They multiply pardons, they shut their eyes upon offenses, their ears to proofs; and the juries, to avoid an excess of severity, frequently fall into an excess of indulgence. The result is a penal system which is incoherent and contradictory; which unites violence to feebleness, and, depending upon the humor of the judge, varies from circuit to circuit, being sanguinary in one part of the island and merciful in another.

If the legislator be desirous to inspire humanity amongst the citizens let him set the example; let him show the utmost respect not only for the life of man, but for every circumstance by which the sensibility can be influenced. Sanguinary laws have a tendency to render men cruel, either by fear, by imitation, or by revenge. But laws dictated by mildness humanize the manners of a nation and the spirit of government.

—*Jeremy Bentham.*

Setting aside the palpable injustice and the certain inefficiency of the bill, are there not capital punishments sufficient in your statutes? Is there not blood enough upon your penal code, that more must be poured forth to ascend to heaven and testify against you? How will you carry the bill into effect?

But suppose it pass; suppose one of these men, as I have seen them—meager with famine, sullen with despair, careless of a life which your lordships are perhaps about to value at something less than the price of a stocking-frame—suppose this man surrounded by the children for whom he is unable to procure bread at the hazard of his existence, about to be torn forever from a family which he lately supported in peaceful industry, and which it is not his fault that he can no longer so support, suppose this man, and there are ten thousand such from whom you may select your victims, dragged into court, to be tried for this new offense, by this new law; still, there are two things wanting to convict and condemn him; and these are, in my opinion, Twelve Butchers for a Jury, and a Jeffries for a Judge.

—*Lord Byron*, in his first speech in House of Lords, on bill to make the breaking of frame work a capital crime.

Christianity says you must abolish the punishment of death, or you must abolish your religion. You must destroy the New Testament, or the New Testament will destroy sanguinary laws; for, powerful as are the obligations of all members of society to assist in the administration of justice, they will among Christians be overpowered by tenderness for life. The moral and religious sentiment of the community will nullify the law. Ignorance, knowing no law but force, will not be approved by intelligence, which knows no law but reason. Mohammedanism may approve cruelty, but it will not be approved by Christianity. Our religion or our law must be altered; they can not exist together. You can not advance with the New Testament in one hand and a sanguinary code in the other.

—*Basil Montagu.*

Upon the practicable abolition of the punishment of death, totally and without reserve, my views coincide with the advocates of the measure.

—*O'Connell.*

But I must first make one other allusion, with reference to the capital convictions in England and France, of which latter kingdom the population is much the greater, by quoting a document, showing a comparative statement of these important facts, which I have no doubt will be listened to with attention, and excite much surprise. In 1825 the number of persons

committed for capital offenses in England and Wales (for the return does not include Ireland) was 1,036. In France, in the same year, the number of persons committed for capital offenses was 134. In 1826 in England, 1,203; in France, 139. In 1827 the number was larger here than at any other period, being 1,529; in France, 106. In 1828, in England, 1,165; in France, 111. In 1829, in England, 1,385; in France, 83. Your lordships will see the extremely small proportions of capital convictions in France, where the population is so much larger, as compared with those which have taken place in England and Wales only, and I hold that this fact alone is a sufficient proof, if any were wanting, of the greater severity, but at the same time of the greater inefficiency of our criminal code to prevent the increase of crime.

—*The Duke of Sussex.*

In the year preceding the alteration of that law (by repealing the punishment of death for privately stealing from the person) the convictions, compared with the prosecutions, were in the proportion of 1 to 15; and in the year following the passing of that act, they were in the proportion of 10 to 15, facts which, instead of proving that the crime has increased, only show the increased efficacy of the law, in bringing home the crime to those who are really guilty of it.

—*Earl Grey.*

Let him who advocates the taking the life of an aggressor first show that all other means of safety are vain, then he will have advanced an argument in favor of taking life, which will not indeed be conclusive, but which will approach nearer to conclusiveness than any that has yet been adduced.

—*Dymond.*

The superior humanity and superior wisdom of the present age had given a merciful character to the punishments awarded for some species of offense; as it was too frequently found that the extreme severity of the laws, as administered heretofore, operated more as a preventive to prosecutions than as a preventive to crime.

—*Chief Justice Denman.*

"*Resolved*, That the efficacy of criminal laws depends less upon the severity of punishment than the certainty of infliction; and that laws which can not be carried into execution without shocking the feelings of society and exciting symyathy for the offender are contrary to reason, inconsistent with morality, and opposed to the interests of justice."

—*Thomas Barrett Lennard, M. P.*, seconded by Joseph Hume, M. P., meeting at Exeter Hall, June 2, 1832.

Resolved, That the excessive severity of the law operates to the total impunity of a great proportion of offenders by deterring humane persons from prosecuting, and by holding out a temptation to jurors to violate their oaths rather than be accessory to judicial murder; while almost all the capital punishments now on the statute book are innovations upon the temperate and wholesome principles of the ancient common law of the land, which had ever been admired for its humanity and wisdom by the greatest legal authorities, and is coeval with the noblest and best principles of the English Constitution."

—*Daniel O'Connell, M. P.*, seconded by J. Sydney Taylor, A. M., meeting at Exeter Hall, June 2, 1832.

It is most discreditable to any man intrusted with power, when the governed turn around upon their governors and say, your laws are so cruel or so foolish that we can not and will not act upon them.

We have no right to shed a criminal's blood because he has shed the blood of another man. We have no right in reason to do this, we have no warrant from religion. It is doubtless a great evil for a man to be murdered, but that, in reason, is no argument for inflicting death upon the murderer.

—*Lord Brougham.*

I do not think the punishment of death is necessary to the security and well-being of society; and I believe its total abolition would not tend to increase those crimes which it is now supposed by many to prevent. The security and well-being of society do not depend upon the severity of punishments. Barbarism in the law promotes barbarism among those subject to the law; and acts of cruelty under the law become examples of similar acts done contrary to law. The real security for human life is found in a reverence for it. If the law regarded it as inviolable, then the people would begin also so to regard it. A deep reverence for human life is worth more than a thousand executions in the prevention of murder, and is, in fact, the great security for human life.

The law of capital punishment, while pretending to support this reverence,

does, in fact, tend to destroy it. If the death penalty is of any force in any case to deter from crime, it is of much more force in lessening our chief security against it, for it proclaims the fact that kings, parliament, judges and juries may determine when and how men may be put to death by violence, and familiarity with this idea can not strengthen the reverence for human life. To put men to death for crimes, civil or political, is to give proof of weakness rather than strength, and of barbarism rather than Christian civilization. If the United States could get rid of the gallows it would not stand long here. One by one we "Americanize" our institutions; and I hope in all that is good we may not be unwilling to follow you.

—*John Bright.*

My noble friend [Lord Holland] who brought forward this bill, aptly observed that the very gist of the bill is to accommodate the law of the land to the practice of our courts. And what is this but a compliment to those principles of human nature, which, in spite of the decrepitude of our laws, and the blindness and inattention of the community, instinctively operate in our courts of justice? It is a compliment to that experience, which has even, by indirect means, anticipated a reform which must eventually take place, and to that lenity which Parliament should sanction and legitimatize.

It has always appeared to me that, although the prevention of crimes be the grand object of all penal laws, yet, to some cases, capital punishment must, from the very nature of things, be utterly inapplicable. I am convinced that, when the offense and the penalty are greatly disproportionate, the enactment must be either nugatory, inasmuch as human nature will revolt from the application; or, if carried into execution, it must alienate the affections, pervert the judgment, and blunt the sensibility of the people. It must, in such cases, either excite in them a feeling of horror and of disgust against their barbarous legislators, or it must tend to confound all those moral sentiments, all those just discriminations between the degrees of crime, which nature and education and experience impress upon the heart of every rational being.

From observing the impaired effect which the punishment of death receives, if applied and enforced against minor offenses, and from observing the still greater injury which the impunity of offenders and the uncertainty of punishment occasion to the community, where such punishment is ordained and not enforced, I can not help drawing the inference that it will be much more beneficial to society as well as more conformable to justice, to apply to minor offenses some inferior punishment which may be rigorously enforced. And such being my sentiments, I do most heartily thank that excellent and great man (Sir Samuel Romilly), by whom the present measure has been introduced into Parliament, for the boon he has hereby endeavored to force on the country; and of that honorable and learned gentleman I can not refrain from speaking in terms which I am convinced he merits, although my testimony, I am aware, can add but little to the estimation in which his character is held by the community; and I can but express my share in these sentiments of admiration which he has won from all good men by his unceasing exertions for the public benefit.

—*Lord Grenville.*

It appears, then, that of the three grounds on which capital punishment for murder is defended two are entirely untenable, while on the third, which is that on which only there is room for serious or lengthened discussion, the balance is in favor of the advocates of change. Those to whom the process by which a conclusion opposed to the penal destruction of life has thus been arrived at is unsatisfactory will, it is hoped, admit that the question has at least been presented in such a form as that the precise link in the chain of reasoning which is supposed to be defective may easily be pointed out and the precise bearing upon the general issue of any error which has been committed readily perceived. But if the argument is unsound let it be confuted. The subject is one of serious and terrible moment, and indifference or inaction with regard to it on the part of those who possess any means of influencing public opinion is only justified by a carefully formed conviction that the system which sends murderers to the gallows will satisfy the most searching test of philosophical examination.

—*Lord Hobart.*

For my own part I do not doubt for a moment either the right of a community to inflict the punishment of death, or the expediency of exercising that right in certain states of society. But when I turn from that abstract right and that abstract expediency to our own state of society; when I consider how difficult it is for any judge to separate the case which requires inflexible justice from that which admits the force of mitigating circumstances, how invidious the task of the Secretary of State in dispensing the mercy of the crown, how critical the comments made by the public, how

soon the object of general horror becomes the theme of sympathy and pity, how narrow and how limited the examples given by this condign and awful punishment, how brutal the scene of the execution. I come to the conclusion that nothing would be lost to justice, nothing lost in the preservation of innocent life, if the punishment of death were altogether abolished.

—*Earl Russell*, Prime Minister of England.

In a system that has been found to be inadequate to its end at all times, and under all circumstances, there must be some radical error, to the discovery of which, as indispensable to any attempt at improvement, our first efforts must be directed. Thus we shall be enabled to form an improved theory, and bring under discussion the probability of its successful operation.

As the opinions that are formed of it as a principle, or of its nature and effects in practice, for a principle it can hardly be called, necessarily vary from time to time, according to the increase of information, it is evident that what is called punishment at one time, may at another have nothing painful in its infliction; and those punishments that are adapted to a particular end in one state of society, may at a later period be altogether unsuitable. At present our code inflicts such punishments as are acknowledged by many to be neither just nor expedient; and laws are enforced that tend only to blunt the feelings of humanity, whilst they fail to reform the criminal or to prevent the commission of crime.

The defects we have endeavored to point out may be summed up as follows:

First. The principle upon which all existing systems of criminal law is founded is not well understood or defined, and in point of fact is not an ultimate principle.

Second. It is variable in its application from time to time, and under different circumstances.

Third. It increases the difficulty attending the administration of the laws and the repression of crime, in proportion to the advance of population, and the consequent complexity of human interests.

It is not upon the criminal alone that an improper effect is produced by the present system; every instance of punishment produces a reaction upon the minds of his associates, and upon society at large, the consequences of which rarely present themselves to the legislator who makes the law, to the judge who administers, or to the officer who executes it.

—*Thomas Jevons.*

The principal objects of punishment are, to benefit the injurer by correction, the injured by redress, and society in general by preventing one of its members, through the infliction of pain and privations, from doing injury, and others through the terror of example, from meditating it.

Does capital punishment, then, promote public utility by the example which it holds out?

This it assuredly does not, if instead of inspiring fear, it inspires rather pity for him who suffers and horror toward him who inflicts it.

The aversion inspired by a criminal, whatever inferences may be attempted to be drawn from it, does not necessarily sanction the punishment of death.

But all ages and nations have sanctioned capital punishment; and this extended and universal experience proves at once both its justice and its necessity. "The history of mankind," might I not answer with Beccaria, "is an immense sea of errors in which a few obscure truths are here and there observed to float," and, "the force of example and of prescription vanishes, when opposed to truth." "On the contrary, if I find some societies, though few in number, who even for a very short time have abstained from the punishment of death, I may refer to them with propriety. It is the fate of great truths, to gleam only like a flash of lightning amidst the dark clouds, in which error has enveloped the universe."

Cease, then, friends of law and justice, cease to believe that blood is necessary to deter men or to diminish crimes. Experience does not prove that so much rigor produces any salutary effect; public utility, far from giving it any sanction, sets herself against it, and it is equally reprobated by the voice of nature and of humanity.

—*Pastoret.*

I shall ask for the abolition of capital punishments until I have the infallibility of human judgment demonstrated to me.

—*Lafayette.*

I am of opinion that hanging is an advantage only to the executioner, who is paid for putting men to death; if punishments are intended for the benefit of society, they should be useful to society.

—*Montaigne.*

Gentlemen of the jury, there is, in what may be called the Old European code, a law that for more than a century all philosophers, all thinking men, all true statesmen, have desired to efface from the remarkable book of universal legislation; a law that Beccaria had declared impious, and that Franklin has declared abominable, without any prosecution having been brought against either Beccaria or Franklin; a law that particularly weighing upon that portion of the people still oppressed by ignorance and misery is odious to democracy, but that is not less repelled by intelligent conservatives; a law of which Louis Phillippe—whom I shall never name without the respect due to age, to misfortune and to a tomb in exile—a law of which Louis Philippe said:

"I have detested it all my life;" a law against which M. de Broglie has written, against which M. Guizot has written; a law the abrogation of which the Chamber of Deputies demanded by acclamation twenty years ago, in the month of October, 1830, and that at the same period the half savage Parliament of Otaheite banished from its codes; a law that the assembly of Frankfort abolished three years ago, and that was maintained in the constitution of 1848 only with the most painful indecision and the most poignant repugnance; a law that at the hour when I am speaking is under the pressure of two propositions of abolition on the legislative table; a law, finally, of which Tuscany will have naught, of which Russia will have naught, and of which it is time that France should wish naught; that law before which the human conscience shrinks with an anxiety every day more profound; it is the death penalty.

Well, gentlemen, it is that law that causes to-day this trial; it is our adversary. I am sorry for the honorable advocate-general, but I perceive it behind him.

I will confess that for twenty years I thought—and I who speak have so stated in pages that I could read to you—I thought, my God! with M. Leon Fancher, who, in 1836, wrote in the Revue de Paris thus—I quote: "The scaffold no longer appears in public places, but at rare intervals, and as a spectacle that justice is ashamed to exhibit." I thought, I say, that the guillotine, since we must call it by its name, was beginning to do justice to itself; that it felt itself rebuked, and had resolved accordingly. It had renounced the Place de Greve; the open sun, the crowd; it was no longer cried in the streets, it was no longer announced as a spectacle; it had brought itself to making its examples as secretly as possible, away from the light of day, Barrier Saint Jacques in a deserted place, before no one. It seemed to me that it began to court concealment, and I congratulated it upon that sentiment of shame.

Well, gentlemen, I deceived myself. M. Leon Fancher deceived himself. It has recovered from that false shame. The guillotine feels that it is a social institution, as the phrase goes nowadays. And, who knows? Perhaps it dreams, too, of its restoration.

The Barrier Saint Jacques is a fall from its prerogative. Perhaps we shall see it some day reappear upon the Place de Greve at midday, in the midst of the multitudes, with its cortege of executioners, of gendarmes, and of public criers, beneath even the windows of the Hotel de Ville, from which one day, the 24th of February, the people had the insolence to assail and mutilate it.

Meanwhile it reasserts itself. It is conscious that society, shaken, needs for recuperation to return to its old traditions, and it is an old tradition. It protests against those declaiming demagogues who are called Beccaria, Vico, Filangieri, Montesquieu, Turgot, Franklin, who are called Louis Philippe, who are called Broglie and Guizot, and who dare to think and to say that a machine to cut off heads is out of place in a society whose book is the Bible.

What! By dint of encroachment upon good sense, upon reason, upon freedom of thought, upon natural right, it has come to this, that they demand of us not only a material respect—for that is not contested, we owe it and we pay it—but moral respect for those penalties that open abysses in our consciences, that blanche the cheeks of all who think of them, that religion abhors *abhorret a sanguine;* for those penalties that dare to be irreparable knowing that they may be blind; for those penalties that dip the finger in human blood to write the commandment: "Thou shalt not kill;" for those impious penalties that make us doubt of humanity when they strike the guilty, and that make us doubt of God when they strike the innocent! No! No! No! We have not come to that! No!

For—and since I am led to it, surely I must say it to you, gentlemen of the jury, and you will understand how deep must have been my emotion—the real culprit in this matter, if there be a culprit, is not my son; it is I!

The real culprit, I insist upon it, is I—I, who for twenty-five years have combated irreparable penalties in all their forms; I, who for twenty-five years have defended upon every occasion the inviolability of human life.

That crime—the defense of the inviolability of human life—I committed it long before my son, much more than my son. I accuse myself, Mr. Advocate-General! I have committed it with all the aggravating circumstances, with premeditation, with tenacity, with recidivation.

Yes, I declare it, that remnant of savage penalties, that old and unintelligible law of talion, that law of blood for blood, I have combatted all my life—all my life, gentlemen of the jury; and so long as there shall remain a breath in my bosom I will combat it, with all my efforts as a writer, with all my acts and all my votes as a legislator. I declare it [M. Victor Hugo extended his arm and pointed to the image of Christ at the end of the court room above the tribunal] before that victim of the death penalty who is there, who looks upon us, and who hears us!

I swear it before that gibbet where, two thousand years ago, for the eternal instruction of the generation, the human law nailed the law divine!

What my son wrote he wrote I repeat, because I inspired him with it from his infancy; because at the same time that he is my son in the flesh he is my son in the spirit, because he wishes to continue the traditions of his father. To continue the traditions of his father! That is a strange fault, and I wonder that for it there should be prosecution.

Gentlemen, I confess that the accusation in the presence of which we are bewilders me.

What! A law may be pernicious, may give to the populace immoral, dangerous, degrading, ferocious exhibitions, may tend to render a people cruel; at certain times may have horrible effects, and the horrible effects produced by that law we shall be forbidden to signalize. And that would be called to fail of respect to the law. And one must account for it before a tribunal of justice. And there must be so much fine and so much imprisonment. Well, then, 'tis well. Close the temples of justice, close the schools; progress is no longer possible. Let us call ourselves Mogul or Thibet; we are no longer a civilized nation. Yes, it will be soonest done. Say that we are in Asia; that there was once a country called France, but that country exists no more, and that you have replaced it by something that is no longer a monarchy, I admit, but that is certainly not a republic.

But let us apply the phraseology to the facts; let us bring it nearer to the realities.

Gentlemen of the jury, in Spain the inquisition was once the law. Well, it must be told that there is lacking respect for the inquisition. In France, torture was once the law. Well, it must be told again, there is lacking respect for the torture. Cutting off the hand was once the law; there is lacking * * * I am lacking respect for the cleaver! Branding with the hot iron was once the law; there is lacking respect for the hot iron. The guillotine is the law. Well, it is true, I admit, there is lacking respect for the guillotine.

Do you know why, Mr. Advocate-General? I will tell you. It is because we would throw the guillotine into that gulf of execration into which we have already fallen, to the applause of the human race, the hot iron, the cutting off of hands, the torture of the inquisition. It is because we would banish from the august and luminous sanctuary of justice that sinister object that is enough to fill it with horror and darkness, the executioner. Ah! and because we wish that we would convulse society! Ah, yes, it is true, we are very dangerous men. We wish to suppress the guillotine. It is monstrous!

Gentlemen of the jury, you are sovereign citizens of a free nation, and, without ignoring the nature of this trial, it is a privilege and a duty to speak to you as men of political existence. Well, reflect upon it, and since we are passing revolutionary times draw your inference from what I shall say. If Louis XVI had abolished the death penalty as he abolished the torture his head would not have fallen. '93 would have been disarmed of the *couperet*, there would have been one bloody page the less in history, the fatal date of January 28 would not have been.

"For who in the face of public conscience, in the face of the civilized world, who would have dared to rebuild the scaffold for the king, for the man of whom it could be said, it was he that overthrew it?

The editor of Evenmentis is accused of having lacked respect for the laws; of having lacked respect for the death penalty. Gentlemen, let us exalt ourselves a little beyond a controversable text; let us exalt ourselves to that which is the foundation of all legislation, to that tribunal in the heart of man. When Servan—who was advocate-general, nevertheless—when Servan fixed upon the criminal laws of his time this memorable brand, "Our penal laws open all the issues for the accusation, and close nearly all for the accused;" when Voltaire thus characterized the judges of Calais, "Oh! do not speak to me of those judges, half monkeys and half tigers;" when Chateaubriand, in the Conservateur, called the law of double vote a foolish and guilty law; when Roger Collard openly, in the Chamber of Deputies, in allusion to

I forget what law of censure, uttered this celebrated cry, "If you pass that law I swear to disobey it;" when those legislators, when those magistrates, when those great philosophers, when those mighty spirits, when those men, illustrious and venerable, spoke thus, what did they? Did they lack respect for the local and existing law? It is possible. The advocate-general says so; I am ignorant of the fact. But this I know—that they were the religious echo of the law of laws, the universal conscience. Did they offend justice, the justice of their day, the transitory and fallible justice? I know not; but this I know, that they proclaimed the justice that is eternal.

Look you, Mr. Advocate-General, I say it without bitterness, you defend not a good cause. In vain your efforts; you wage an unequal conflict against the spirit of civilization, against a softened sentiment, against progress. You have against you the innate resistance of the heart of man; you have against you all the principles beneath whose influence France speeds on and makes the world to speed; the inviolability of human life, fraternity for the ignorant classes, the dogma of amelioration that takes the place of the dogma of vengeance! You have against you all that enlightens reason, all that vibrates in the soul, philosophy as well as religion; on one side Voltaire, on the other Jesus Christ! In vain your efforts; that appalling service that the scaffold pretends to render to society, society at its heart holds in horror and repudiates. In vain your efforts, in vain the efforts of the partisans of capital punishment; and you see that I do not confound society with them. In vain the efforts of the partisans of capital punishment; they can not inspire with innocence the old penalty of talion; they can not cleanse those hideous texts upon which has flowed so many ages the blood of human beings slaughtered upon the scaffold.

—*Victor Hugo*, before the court of assizes in Paris, June 10, 1851.

Nature has given man a right to use force, when it is necessary for his defense and the preservation of his rights, and this principle is generally acknowledged; reason demonstrates it, and nature herself has engraven it on the heart. Most men will naturally defend themselves and their possessions; happy if they were as well instructed to keep within the just limits which nature has prescribed to a right granted only through necessity.

If we inquire into the cause of human corruptions we shall find that they proceed from the impunity of crimes, and not from the moderation of punishments. By the exacting of severe penalties the springs of government are weakened, the imagination grows accustomed to the severe as well as to the milder punishments, and as the fear of the latter diminishes they are soon obliged, in every case to have resource to the former. Robberies on the highway had grown common in some countries. In order to remedy this evil they invented the punishment of breaking upon the wheel, the terror of which put a stop for awhile to this mischievous practice. But soon after robberies on the highway were become as common as ever.

—*Vattel.*

It is undoubtedly both the right and duty of society to punish every action which can disturb the public system of justice; it can even—if the offender has, by a relapse shown himself incorrigible, or if his offense is of a nature to endanger the public safety—render him incapable of again injuring the other members of the community. But does this right extend farther than to the loss of liberty by which the object is gained? Every punishment which goes beyond the limit of necessity enters the jurisdiction of despotism and revenge.

—*Oscar*, Crown Prince of Sweden.

The virtues are all parts of a circle; whatever is humane, is wise; whatever is wise, is just; and whatever is wise, just and humane, will be found to be the true interest of States, whether criminals or foreign enemies be the subject of their legislation.

I suspect the attachment to death as a punishment for murder, in minds otherwise enlightened on the subject of capital punishment, arises from a false interpretation of a passage in the Old Testament. And that is "He that sheds the blood of man by man shall his blood be shed." This has been supposed to imply that blood could be only expiated by blood. But I am disposed to believe, with a late commentator on this text of Scripture, that it is rather a prediction than a law. The language of it is, simply, that such is the folly and depravity of men that murder in every age shall beget murder.

Laws which inflict death for murder are, in my opinion, as unchristian as those which justify or tolerate revenge; for the obligation of Christianity upon individuals, to promote repentance, to forgive injuries, and to discharge the duties of universal benevolence, is equally binding upon States.

—*Dr. Franklin.*

One would think that in a nation jealous of its liberty these important truths would never be overlooked, and that the infliction of death, the highest act of power that man exercises over man, would seldom be prescribed where its necessity was doubtful. But on no subject has government, in different parts of the world, discovered more indolence and inattention than in the construction or reform of the penal code. Legislators feel themselves elevated above the commission of crimes which the laws prescribe, and they have too little personal interest in any system of punishments to be critically exact in restraining its severity. The degraded class of men, who are the victims of the laws, are thrown at a distance which obscures their sufferings and blunts the sensibilities of the legislator. Hence sanguinary punishments, contrived in despotic and barbarous ages, have been continued when the progress of freedom, science, and morals, render them unnecessary and mischievous.

It being established that the only object of human punishment is the prevention of crimes, it necessarily follows that when a criminal is put to death it is not to revenge the wrongs of society or of any individual: "it is not to recall past time, and to undo what is already done," but merely to prevent the offender from repeating the crime, and to deter others from its commission by the terror of the punishment. If, therefore, these two objects can be attained by any penalty short of death, to take away life in such a case seems to be an unauthorized act of power.

That the first of these may be accomplished by perpetual imprisonment, unless the unsettled state, the weakness, or poverty of a government prevent it, admits of little dispute. It is not only as effectual as death, but is attended with these advantages, that reparation may sometimes be made to the party injured—that punishment may follow quick upon the heels of the offense, without violating the sentiments of humanity or religion—and if, in a course of years, the offender becomes humbled and reformed, society, instead of losing, gains a citizen.

These circumstances make it doubtful whether capital punishments are beneficial in any cases, except such as exclude the hopes of pardon. It is the universal opinion of the best writers on this subject, and many of them are among the most enlightened men of Europe, that the imagination is soon accustomed to overlook or despise the degree of the penalty, and that the certainty of it is the only effectual restraint. They contend that capital punishments are prejudicial to society, from the example of barbarity they furnish, and that they multiply crimes instead of preventing them.

In support of this opinion they appeal to the experience of all ages. They affirm, it has been proved in many instances, that the increase of punishment, though it may suddenly check, does not, in the end, diminish the number of offenders. * * * They appeal to the experience of modern Europe, to the feeble operation of the increased severity against robbers and deserters in France, and to the situation of England, where, amidst a multitude of sanguinary and atrocious laws, the number of crimes is greater than in any part of Europe. They cite the example of Russia, where the introduction of a milder system has promoted civilization, and been productive of the happiest effects; and they applaud the bolder policy of Leopold, which has actually lessened the number of crimes in Tuscany, by the total abolition of all capital punishments.

This instructive fact is not only authenticated by discerning travelers, but it is announced by the celebrated edict of the grand duke, issued so lately as 1786. To these might be added the example of Sweden and Denmark; and indeed the more closely we examine the effects of the different criminal codes in Europe, the more proofs we shall find to confirm this great truth, that the source of all human corruption lies in the impunity of the criminal, not in the moderation of punishment.

—*William Bradford*, 1795.

To prevent crimes is the noblest end and aim of criminal jurisprudence; to punish them is one of the means necessary for the accomplishment of this noble end and aim. The impunity of an offender encourages him to repeat his offenses. The witnesses of his impunity are tempted to become his disciples in guilt. These considerations form the strongest—some view them as the sole—argument for the infliction of punishments by human laws.

There are in punishments three qualities which render them fit preventatives of crime: The first is their moderation; the second is their speediness; the third is their certainty.

We are told by some writers that the number of crimes is unquestionably diminished by the severity of punishments. If we inspect the greatest part of the criminal codes, their unwieldy bulk and their ensanguined hue will force us to acknowledge that this opinion may plead in its favor a very high antiquity and a very extensive reception. On accurate and unbiased examination, however, it will appear to be an opinion unfounded and pernicious,

inconsistent with the principles of our nature and by a necessary consequence with those of wise and good government. So far as any sentiment of generous sympathy is suffered by a merciless code to remain among the citizens, their abhorrence of crimes is, by the barbarous exhibitions of human agony, sunk in their commiseration of criminals.

These barbarous exhibitions are productive of another bad effect—a latent and gradual, but a powerful, because a natural aversion to the laws. Can laws which are a natural and a just object of aversion receive a cheerful obedience or secure a regular and uniform execution? The expectation is forbidden by some of the strongest principles of the human frame. Such laws, while they excite the compassion of society for those who suffer, rouse its indignation against those who are active in the steps preparatory to their sufferings.

When, on the other hand, punishments are moderate and mild, every one will, from a sense of interest and duty, take his proper part in detecting, in exposing, in trying, and in passing sentence on crimes. The consequence will be, that criminals will seldom elude the vigilance or baffle the energy of public justice. True it is that on some emergencies excesses of a temporary nature may receive a sudden check from rigorous penalties; but their continuance and their frequency introduce and diffuse a hardened insensibility among the citizens: and this insensibility, in its turn, gives occasion or pretense to the farther extension and multiplication of those penalties. Thus one degree of severity opens and smooths the way for another, till, at length, under the specious appearance of necessary justice, a system of cruelty is established by law. Such a system is calculated to eradicate all the manly sentiments of the soul, and to substitute in their place dispositions of the most depraved and degrading kind.

But the certainty of punishments is that quality which is of the greatest importance, in order to constitute them fit preventives of crimes. This quality is, in its operation, most merciful as well as most powerful. When a criminal determines on the commission of crime he is not so much influenced by the lenity of the punishment as by the expectation that, in some way or other, he may be fortunate enough to avoid it. This is particularly the case with him when this expectation is cherished by examples or by experience of impunity.

It was the saying of Solon that he had completed his system of laws by the combined energy of justice and strength. By this expression he meant to denote that laws of themselves would be of very little service unless they were enforced by a faithful and an effectual execution of them. The strict execution of every criminal law is the dictate of humanity as well as of wisdom.

—*Judge Wilson*, charge to grand jury, United States circuit court, Easton, Md., November 7, 1791.

Gladly would I coöperate with any society whose object should be to promote the abolition of every form by which the life of man can be voluntarily taken by his fellow-creature, man. I do heartily wish and pray for the success of your efforts to promote the abolition of capital punishment.

—*John Quincy Adams.*

The subject of crime and puishment has for several years received much attention, both in Europe and America; and it is generally admitted, that discoveries and improvements of great practical importance have been made in this country.

A grave question has been started, whether it would be safe to abolish altogether the punishment of death. An increasing tenderness for human life is one of the most decided characteristics of the civilization of the day, and should in every proper way be cherished. Whether it can, with safety to the community, be carried so far as to permit the punishment of death to be entirely dispensed with, is a question not yet decided by philanthropists and legislators. It may deserve your consideration, whether this interesting question can not be brought to the test of the sure teacher, experience. An experiment, instituted and pursured for a sufficient length of time, might settle it on the side of mercy. Such a decision would be a matter of cordial congratulation.

Should a contrary result ensue, it would probably reconcile the public mind to the continued infliction of capital punishment as a necessary evil. Such a consequence is highly to be desired, if the provisions of the law are finally to remain, in substance, what they are at present. The pardoning power has been intrusted to the chief magistrate; but this power was not designed to be one of making or repealing law. A state of things, which deprives the executive of the support of public sentiment, in the conscientious discharge of his most painful duty, is much to be deplored.

—*Governor Edward Everett.*

There is no power more flattering to ambition, because there is none of a higher nature, than that of disposing at will of the lives of our fellow-creatures. Accordingly no power has been more frequently or more extensively assumed, exercised, and abused. When we review the past, history seems to be written in letters of blood. Until within a very short period, the trade of government has been butchery in mases, varied by butchery in detail. The whole record is a catalogue of crimes, committed for the most part under legal forms, and the pretense of public good. In church and state it is the same; this power was not given to rust unused.

That such scenes are no longer to be witnessed must be attributed to changes similar in principle and tendency to the total abolition of capital punishment. It is because the powers of governments and of the few have been greatly abridged and restricted, and particularly the very power in question It is because the rights of the many, and of individuals have been better ascertained and secured, and especially the right of life. It is because the standard of morality has been raised, and the occurrence of the greatest crimes prevented, by restoring in some good degree, the sanctity of human life, not so much in the letter of the law as in public opinion, which decides the spirit of the law.

Let us complete this blessed reformation by pushing onward in the same direction which experience has already sanctioned; but let us not vainly imagine that the smallest portion of a power, unnecessary, not clearly to be justified, terrible in its most discreet and sparing use, but capable of shrouding the whole land in mourning by a single abuse, may be safely trusted to any fallible government, when by looking back but a century or two we may see all christendom groaning under its abuse, the soil red with carnage, and a never ending cry of innocent blood going up to heaven from thousands and tens of thousands of the wisest and the best, expiating under the hand of the executioner those virtues which tyrants hate and fear.

—*Robert Rantoul, jr.*

Fellow-citizens, your invitation to me to attend the anniversary meetings of the national and of the New York State societies for the abolition of capital punishment is duly received. Under circumstances which would admit of my attendance, it would give me great pleasure to meet you and the many humane citizens who will be in your city on that noble occasion. My heart is with you.

—*Vice-President Richard M. Johnson.*

The principal, and in truth the only plausible ground, from which advocates for capital punishment endeavor to derive a right to inflict them, is the authority of the sacred Scriptures. But as the laws of Moses were merely local in their operation, it is vain to attempt to justify capital punishment under their authority.

—*Elisha Williams.*

Time and reflection have confirmed the opinion cherished by me for many years, that in our country at least no just cause exists for the infliction of death punishment, and that its abolishment will be hereafter looked upon as evidence of the moral character of nations, as they successively shall blot it from their criminal codes.

—*Vice-President Dallas.*

I have been about thirty years in the ministry, and I have never yet discovered that the founder of Christianity has delegated to man any right to take away the life of his fellow-man.

—*Father Mathew.*

At the present day the infliction of capital punishment is mainly confined to murder; and it is on that account that the chief difficulty is presented against its abolition. It will not, however, take many words to show that if capital punishment is unsuitable as a remedy for other descriptions of crime, it is, above all, the most unfit to be applied as a corrective in the case of homicide.

—*M. B. Sampson.*

I have considered the subject (capital punishment) long, patiently, and carefully, on Bible principles, and I have deliberately adopted the opinion that the death penalty ought to be abolished.

—*Rev. James Murphy.*

The difficulty of procuring capital convictions is increasing; and it is confidently anticipated that capital punishments must cease in this country, if for no other reason, because they can not be carried into effect.

—*Prof. T. C. Upham.*

The sanguinary complexion of our criminal code has long been a subject of complaint. It is certainly a matter of serious concern that capital convictions are so frequent—so little attention paid to a due proportion of punishment—I have confidence in your wisdom and humanity.

When a law is treated with manifest disrespect it should either be repealed or better means made use of to enforce it.

The wisdom of substituting imprisonment instead of death has been in a great measure realized.

—*Governor George Clinton.*

All institutions of government are imperfect; subject to the law of improvement. Despotism says, "No, because they are old." A different principle prevails in America. As the intelligence of the people increases the power of the government may be abridged.

The high reputations of our prisons has become impaired by the complaints of its inhumanity. In their management moral influence instead of severe corporal punishment should be employed.

Discipline should be tempered with kindness.

Every philanthropist clings to the hope that the supremacy of the laws will be maintained without exacting the sacrifice of life.

—*Governor Seward.*

The experience of mankind has fully proven that a largely bloody code of laws has not been the most effectual to prevent crime, while the growing objections to capital punishment, and the positive refusal of jurors to convict in many instances warn us that some other remedy ought to be tried.

—*Cassius M. Clay.*

The state teaches men to kill. If you destroy the gallows you carry one of the strong outposts of the devil.

—*Theodore Parker.*

It affords me much pleasure to observe that my own views on capital punishment are of the theme of the best men of our nation. I have in every Legislature of which I have been a member pressed the subject, and used every effort, publicly and privately, to redeem my country from this barbarous sin. As an advocate I have never received a fee for the prosecution of one capitally charged, and without reward I have defended almost to the utter prostration of my health nine-tenths of the capital cases of my circuit. As a judge, I have condemned a convict to death, only to besiege the executive chamber, several hundred miles from the court, to obtain his pardon. No vanity prompts this statement. No discouragement, no scoff nor scorn, so help me God, shall turn me back. If there is a God in Justice, so also is there a God in Mercy.

—*Judge Benj. F. Porter*, professor of law, University of Alabama.

SENATE CHAMBER, *February 12, 1855.*

DEAR SIR: In response to your inquiry, I beg leave to say that I am happy in an opportunity to bear my testimony against capital punishment. My instincts were ever against it, and from the time when, while yet a student of law, I read the classical report to the Legislature of Louisiana by that illustrious jurist, Edward Livingston, I have been constantly glad to find my instincts confirmed by reason. Nothing of argument or experience since has in any respect shaken the original and perpetual repugnance with which I have regarded it. Punishment is justly inflicted by human power, with a twofold purpose: first, for the protection of society, and secondly, for the reformation of the offender. Now, it seems to me clear that, in our age and country, the taking of human life is not necessary to the protection of society, while it reduces the period of reformation to a narrow, fleeting span. If not necessary, it can not come within the province of self-defense, and is unjustifiable.

It is sad to believe that much of the prejudice in favor of the gallows may be traced to three discreditable sources: first, the spirit of vengeance, which surely does not properly belong to man; secondly, unworthy timidity, as if a powerful civilized community would be in peril, if life were not sometimes taken by the Government; and, thirdly, blind obedience to the traditions of another age. But rack, thumbscrew, wheel, iron crown, bed of steel, and every instrument of barbarous torture, now rejected with horror, were once upheld by the same spirit of vengeance, the same timidity, and the same tradition of another age.

I trust that the time is at hand when Massachusetts, turning from the vindictive gallows, will provide a comprehensive system of punishment, which

by just penalties and privations shall deter from guilt, and by just benevolence and care shall promote the reformation of its unhappy subjects. Then, and not till then, will our beloved Commonwealth imitate the Divine justice, which "desireth not the death of a sinner, but rather that he may turn from his wickedness and live."

Believe me, dear sir, very faithfully yours,

CHARLES SUMNER.

TO THE CHAIRMAN OF THE COMMITTEE.

The punishment of offenders is perhaps the gravest responsibility of civilized society, and in modern times the utmost attention of the sincerest thinkers and observers has been bestowed upon the philosophy and the phenomena of crime. In order that the laws may be both just and humane, it is necessary that detection and punishment shall be speedy and sure, and also that prevention and reform shall be secured in the largest measure. The progress of civilization steadily diminishes crimes of violence, and also steadily discourages punishment of a violent, cruel, or sanguinary character. The infliction of the penalty of death as a punishment for crime will one day be discontinued among civilized men.

Already philosophers, jurists, and statesmen in large numbers, possessed of the most comprehensive experience in human affairs, and clothed with the highest authority, have pronounced against it; and it will initiate a new era in the progress of Massachusetts when she shall conform her penal legislation to the most enlightened principles of criminal jurisprudence, and consult her truest safety by its abolition. Whenever that event shall occur, whether as a private citizen, or in a public capacity, I shall respect the intelligence and assent to the policy by which it will be accomplished.

—*John A. Andrew*, to the Legislature of Massachusetts, 1861.

I object to capital punishment because I do not think its character satisfactory or its results encouraging. I regard it in the first place as an inefficient punishment. I mean by this that it is a penalty uncertain of infliction, and yet certainty of punishment is a greater preventive of evil than severity of punishment. This is so universally acknowledged that it needs no discussion. Why is the penalty uncertain of infliction? Simply because the tribunal that tries all these crimes is a human tribunal; and the laws of the Old Testament may be as severe and imperative as possible, but the human heart is kinder than all such enactments and will be pitiful in all capital cases—in all trials where a man's life is in peril.

The history of the world shows that judges, juries, and witnesses have shrunk from being participants in verdicts of guilty where death may result; and we know in the history of our own State of one conviction at least, which was the result of assurances that the death penalty had been abolished. It will affect judges, juries, witnesses, and informers. No witness will testify with that positiveness of statement or that clearness of conviction which he really has in his own mind when he knows a man's life is hanging on his word. Judges will not charge as they would if they knew that the man was to receive a punishment which could be remitted if he was afterwards proved innocent.

Capital punishment is injurious to society because the example is bad. You propose by your laws to teach the sanctity of human life and yet you say to the people of this State that under certain circumstances their lives are not sacred. In other words, you propose to educate the public mind so that men will not kill by declaring that you will kill. In one sentence of your statute you demand that the criminal shall reverence the sanctity of human life and in the next you show your contempt for it. You demand of him in the hot blood of hate a forbearance which in the cold blood of deliberation you declare you will not grant; and so the awful lesson of killing is read from your own statute book and you give it its utmost sanction.

I feel that I may be pleading for the life of some innocent man in whose destruction the defeat of the amendment may make us participate. I pray you, gentlemen, if you have any doubts about the matter allow those doubts to enlist you on the side of mercy.

—*Thomas B. Reed*, in Maine Legislature, February 19, 1869.

The fundamental truths underlying the opinions of the distinguished men above quoted, were stated by Marquis Beccaria, of Milan, at a time when codes were promulgated by the edicts of princes, in many countries, instead of by acts of parliaments or

congresses. He sent his philosophical treatise forth with promises which have been realized in many countries, by the enactment of beneficent laws based upon the principles he advocated. Shall this nation, at an early day, enjoy the blessings which these principles have in their adoption, conferred upon others? I quote his words:

If these truths should happily force their way to the thrones of princes, be it known to them that they come attended by the secret wishes of all mankind. Tell the king who deigns them a gracious reception that his fame shall outlive the glory of conquerers, and that equitable posterity will exalt his peaceful trophies above those of a Titus, an Antonius, or a Trajan.

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